United Nations A/63/691–S/2009/50

General Assembly
Security Council

Distr.: General
26 January 2009

Original: English

General Assembly
Sixty-third session
Agenda item 64
Promotion and protection of human rights

Security Council
Sixty-fourth year

Identical letters dated 23 January 2009 from the Permanent Representative of Qatar to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to forward herewith a letter from Her Highness Sheikha Mozha bint Nasser Al-Missned, the Consort of His Highness the Emir of the State of Qatar, addressed to Ambassador Jean-Maurice Ripert, Permanent Representative of France to the United Nations and President of the Security Council (see annex).

I would appreciate it if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 64, and of the Security Council.

(*Signed*) Nassir Abdulaziz **Al-Nasser**
Ambassador
Permanent Representative

09-22065 (E) 280109

Annex to the identical letters dated 23 January 2009 from the Permanent Representative of Qatar to the United Nations addressed to the Secretary-General and the President of the Security Council

[Original: Arabic]

Doha, 15 January 2009

As you are aware, on 4 January 2009, I addressed the Secretary-General of the United Nations regarding the shameful situation in Gaza. I expressed particular concern over the targeting of civilians and such civilian institutions as places of worship, schools and hospitals, in a manner that contravenes the most basic rights accorded by religious law and international conventions.

In my capacity as Chairperson of the Qatar Foundation for Education, Science and Community Development and as President of the International Organization for the Protection of Educational Institutions and their Employees in Crisis Areas, the headquarters of which are in Qatar, I reiterate through you my profound condemnation of and concern over the collective punishment and direct targeting to which the Palestinian people in the Gaza Strip is being subjected as a consequence of the attacks launched from air and sea and the ground invasion.

Given that the situation is seriously deteriorating, I would like, in my capacity as Special Envoy for Basic and Higher Education of the United Nations Educational, Scientific and Cultural Organization (UNESCO), to express my profound condemnation of the damage being inflicted on educational institutions and schools, and the direct and deliberate targeting of children and teachers by Israeli forces with no regard for the protected status of such institutions and, in particular, those run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). As you are aware, Israeli occupation forces targeted the Fakhura School in the Jabaliya refugee camp, where defenceless civilians had taken refuge, leaving 43 dead and over 100 injured.

The eyes of the world are currently on the United Nations and, in particular, the Security Council, in the expectation that it will shoulder its responsibility to protect Palestinian civilians in the Gaza Strip, especially in view of the fact that the Council will, in the forthcoming few days, convene an open debate on the protection of civilians. I join my voice to those calling for the Security Council and its members to meet their political, moral and humanitarian obligations to the Palestinian people and the peoples of the region by conducting an investigation into the crimes that have been committed against Palestinian civilians and adopting a resolution containing effective measures to halt ongoing violations of human rights law and international humanitarian law with respect to Palestinian civilians. Such a resolution must be guided by the purposes and principles of the Charter of the United Nations, and take into account the commitments consequent upon that Charter and other international legal instruments, including the Fourth Hague Convention of 1907; the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, including the provisions of the First Protocol to that Convention which are applicable to the situation in Occupied Palestinian Territory; and United Nations Security Council resolution 1860 (2009) of 8 January

2009 on the tragic situation in the Gaza Strip, as well as other previous resolutions relating to the situation in the Middle East, including the Palestinian question.

In my capacity as Special Envoy for Basic and Higher Education of UNESCO, I remind the President of the Council that Security Council resolution 1612 (2005) established a Working Group of the Security Council on Children and Armed Conflict and that paragraph 2 thereof called for a monitoring and reporting mechanism on children and armed conflict to address grave violations perpetrated against children in armed conflicts, which include the killing and maiming of children and attacks against schools.

Through you, I make a direct appeal to the Security Council to request the Secretary-General to report to it at the earliest opportunity on the status of Palestinian children in the Gaza Strip and the killing, maiming and displacement they have suffered, and on the deadly attacks carried out against schools and educational institutions, including the UNRWA Fakhura School in the Jabaliya camp. Such a report should be submitted with a view to the adoption by the Council of a resolution containing effective measures to halt the ongoing violations of human rights law and international humanitarian law to which children in the Gaza Strip are being subjected, and ensure that the occupying Power, Israel, is held responsible for its violations of international law and that the perpetrators are held accountable and punished for their acts.

This is a matter of importance, because the continued targeting of those institutions leaves Palestinian citizens with no safe havens from the indiscriminate aggression. We turn to the Security Council to take this necessary step in accordance with the provisions of international human rights law and international humanitarian law relating to the protection of civilian targets, including educational institutions and those who work in and benefit from them, in order to relieve the devastated people of Gaza and to hold accountable and punish the perpetrators for their acts.

The Council has no other option but to investigate, uncover the facts, and adopt a resolution containing effective measures to halt the ongoing violations of international human rights law and international humanitarian law, and present the incontrovertible evidence needed to hold the criminals accountable and punish them for the crimes they have perpetrated against Palestinian civilians in the Gaza Strip.

Our peoples expect to see as soon as possible the outcome of the investigations and the measures taken in that regard by the Council.

(*Signed*) Mozah bint Nasser **Al-Misnad**

United Nations A/63/692–S/2009/51

General Assembly
Security Council

Distr.: General
27 January 2009

Original: English

General Assembly
Sixty-third session
Agenda items 13 and 18

Protracted conflicts in the GUAM area and their implications for international peace, security and development

The situation in the occupied territories of Azerbaijan

Security Council
Sixty-fourth year

Letter dated 23 January 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda items 13, "Protracted conflicts in the GUAM area and their implications for international peace, security and development", and 18, "The situation in the occupied territories of Azerbaijan", and of the Security Council.

(*Signed*) Agshin **Mehdiyev**
Ambassador
Permanent Representative

09-22170 (E) 250209

Annex to the letter dated 23 January 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory

1. The present Report provides the view of the Government of the Republic of Azerbaijan wit regard to the international legal responsibilities of the Republic of Armenia ("Armenia") as th belligerent occupier of the legitimate and recognised territory of the Republic of Azerbaija ("Azerbaijan")[1]. The Report addresses the following issues:

a) Is Armenia an occupier in international law of Azerbaijani territory?

b) If so, what are Armenia's duties as an occupier of Azerbaijani territory with regard to issue such as the maintenance of public order, the preservation of the Azerbaijani legal system and th protection of human rights in the territory in question?

c) How may Armenia's responsibilities be monitored and enforced in international law?

1. General

2. International law historically dealt with question of occupation of territory of a state as part o what used to be called the law of war and what is now called international humanitarian law.[2] The law is essentially laid down in three instruments, being the Regulations annexed to Hague Convention IV, Respecting the Laws and Customs of War on Land 1907 ("the Hague Regulations") Geneva Convention IV on the Protection of Civilians in Time of War 1949 ("Geneva Convention IV") and Additional Protocol I to the Geneva Conventions of 1949 relating to the Protection o Victims of International Armed Conflicts 1977 ("Additional Protocol I").

3. Armenia became a party to Geneva Convention IV and to Additional Protocol I on 7 June 1993 and Azerbaijan became a party to Geneva Convention IV on 1 June 1993. Accordingly Armenia is bound by all three of the instruments noted above, the Hague Regulations constituting customary international law.

[1] For more information on the matter, see also the Reports entitled "Military Occupation of the Territory of Azerbaijan: a Legal Appraisal", A/62/491-S/2007/615, "The Legal Consequences of the Armed Aggression of the Republic of Armenia Against the Republic of Azerbaijan", A/63/662-S/2008/812, and "Fundamental Norm of the Territorial Integrity of States and the Right to Self-Determination in the Light of Armenia's Revisionist Claims", A/63/664-S/2008/823.

[2] See e.g. L. Green, *The Contemporary Law of Armed Conflict*, 2nd ed., Manchester, 2000, chapters 12 and 15; H.P. Gasser, "Protection of the Civilian Population" in D. Fleck (ed.), *Handbook of Humanitarian Law in Armed Conflict*, Oxford, 1995, p. 209; UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford, 2004, chapters 9 and 11; E. Benvenisti, *The International Law of Occupation*, Princeton 2004 and J. Pictet (ed.), *The Geneva Conventions of 12 August 1949: Commentary, Geneva Convention IV*, Geneva, 1958. See also A. Roberts, "What is a Military Occupation?", 55 British Year Book of International Law, p. 249.

a) Occupation and Sovereignty

4. The first point to make is that international law specifies that territory cannot be acquired by the use of force. Article 2 (4) of the United Nations Charter declares that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state ..".

5. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970[3] provided that:

> "The territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal".

6. Principle IV of the Declaration of Principles adopted by the Conference on Security and Cooperation in Europe in the Helsinki Final Act 1975 noted that:

> "The participating states will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal".

7. It is, thus, abundantly clear that occupation does not confer sovereignty over the occupied territory upon the occupying state. Gasser, for example, writes that:

> "The annexation of conquered territory is prohibited by international law. This necessarily means that if one state achieves power over parts of another state's territory by force or threat of force, the situation must be considered temporary by international law. The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control over foreign territory".[4]

8. Accordingly, sovereignty over the occupied territory does not pass to the occupier. The legal status of the population cannot be infringed by any agreement concluded between the authorities of the occupied territory and the occupying power, nor by an annexation by the latter.[5] Occupation is, thus, a relationship of power and such power is regulated according to the rules of international humanitarian law, which lays down both the rights and the obligations of the occupying power pending termination of that status. Both the legal status of the parties to the conflict and the legal status of the territory in question remain unaffected by the occupation of that territory.[6] Accordingly, no action taken by Armenia or by its subordinate local authority within the occupied territories can

[3] Adopted in General Assembly resolution 2625 (XXV).
[4] *Op.cit.*, p. 242. See also Benvenisti, *Op.cit.*, p. 8. Note in addition *Prefecture of Voiotia v Germany (Distomo Massacre)*, Court of Cassation, Greece, 4 May 2000, 129 International Law Reports, pp. 514, 519 and *Mara'abe v The Prime Minister of Israel*, Israel Supreme Court, 15 September 2005, 129 International Law Reports, pp. 241, 252.
[5] See article 47 of Geneva Convention IV.
[6] See article 4 of Additional Protocol I.

affect the pre-existing legal status of these territories, which thus remain Azerbaijani in internatio law.

b) Commencement of Occupation

9. Article 42 of the Hague Regulations provides that:

> "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised".

10. This provision is considered to be a rule of customary international law and thus binding on states.[7] It was examined by the International Court of Justice in the *Construction of a Wall* advis opinion, in which the Court declared that:

> "territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised".[8]

11. The International Court of Justice noted that:

> "under customary international law, as reflected in article 42 of the Hague Regulations of 1907, territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised .... In order to reach a conclusion as to whether a state, the military forces of which are present on the territory of another state as a result of an intervention, is an 'occupying power' in the meaning of the term as understood in the *jus in bello*, the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening state in the areas in question".[9]

12. Article 2 of Geneva Convention IV provides that the convention shall apply:

> "to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance".[10]

13. Since both Armenia and Azerbaijan are parties to this Convention, they are bound by provisions. This obligation thus derives from both quoted parts of the article. Insofar as the fi paragraph is concerned, the official Commentary on the Convention notes that "[a]ny differen arising between two states and leading to the intervention of members of the armed forces is

[7] See *Construction of a Wall*, ICJ Reports, 2004, pp. 136, 172.
[8] *Ibid.*, p. 167.
[9] *Congo v Uganda*, ICJ Reports, 2005, pp. 168, 229-30.
[10] See also article 3 of Additional Protocol I.

armed conflict within the meaning of article 2".[11] That this happened from the early 1990s is indisputable as is the continuing outbreak of low-level hostilities and loss of life.[12]

14. The International Court of Justice has discussed the meaning of this paragraph in its advisory opinion in the Construction of a Wall case.[13] It noted that the Convention is applicable under this paragraph when two conditions were fulfilled; that there exists an armed conflict and that the conflict is between two contracting parties. The Court continued by stating that "[i]f those two conditions are satisfied, the Convention applies, in particular, in any territory occupied in the course of the conflict by one of the contracting parties". Further, the Court noted that the object of the second paragraph, which provides that the Convention applies to "all cases of partial or total occupation of the territory of a High Contracting Party", was "directed simply to making it clear that, even if the occupation effected during the conflict met no armed resistance, the Convention is still applicable". As the Court emphasised, the purpose of the Convention was to seek to guarantee the protection of civilians irrespective of the status of the occupied territory.[14] It further underlined its approach by concluding that:

> "the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties".[15]

15. Further, the Eritrea–Ethiopia Claims Commission has pointed out that:

> "These protections [provided by international humanitarian law] should not be cast into doubt because the belligerents dispute the status of territory ... respecting international protections in such situations does not prejudice the status of the territory".[16]

16. Insofar as the conflict between Armenia and Azerbaijan is concerned, both the Hague Regulations and Geneva Convention IV apply. Further, as Armenia is a party to Additional Protocol I, this also applies.

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[11] Pictet (ed.), *Commentary*, *Op.cit.*, p. 20.

[12] See e.g. an AFP report dated 5 September 2007 stated that three Armenian and two Azerbaijani soldiers had been killed in fighting near Nagorny Karabakh. The report concludes by noting that "Armenian and Azerbaijani forces are spread across a ceasefire line in and around Nagorny Karabakh, often facing each other at close range, and shootings are common", <http://www.reliefweb.int/rw/rwb.nsf/db900sid/TBRL-76RMYP?OpenDocument>. See also the Parliamentary Assembly of the Council of Europe report on Migration, Refugees and Population dated 6 February 2006, which deplores "the frequent incidents along the ceasefire line and the border incidents, which are detrimental to refugees and displaced persons", Doc. 10835, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs /Doc06/EDOC10835.htm>, at para. 5. This terminology was repeated in Resolution 1497, 2006.

[13] ICJ Reports, 2004, pp. 136, 174-5.

[14] *Ibid.*, p. 175.

[15] *Ibid.*, p. 177.

[16] Partial Award, Central Front, Ethiopia's Claim 2, The Hague, 28 April 2004, para 28. See also article 4 of Additional Protocol I.

2. Armenia as an Occupier under International Law

a) Armenia as the Occupier of Azerbaijani Territory

17. The critical period for the determination of the status of Armenia as an occupying power of Azerbaijani territory is the end of 1991 for this was the period during which the USSR disintegrated and the new successor states came into being, thus transforming an internal dispute between the two Union Republics into an international conflict. There can be no occupation in an international law sense of the concept as between contending forces in an internal conflict. With the declaration of Armenian independence on 21 September 1991 and that of Azerbaijan on 18 October that year, the conflict over Nagorny Karabakh[17] became an international one. Both Armenia and Azerbaijan came to independence and were recognised as such in accordance with international law within the boundaries that they had had as republics of the USSR. This meant that Nagorny Karabakh was internationally accepted as falling with the territory of Azerbaijan.

18. Fighting in the region of Nagorny Karabakh intensified after independence of Armenia and Azerbaijan, followed by the increased involvement of troops from the Republic of Armenia during this period. The first armed attack by the Republic of Armenia against the Republic of Azerbaijan after the independence of the two Republics – an attack in which organized military formations and armoured vehicles operated against Azerbaijani targets – occurred in February 1992, when the town of Khojaly in the Republic of Azerbaijan was notoriously overrun.[18] Direct artillery bombardment of the Azerbaijani town of Lachin – mounted from within the territory of the Republic of Armenia – took place in May of that year.[19] Armenian attacks against areas within the Republic of Azerbaijan were resumed in 1993, eliciting a series of four Security Council resolutions. Human Rights Watch in its comprehensive report of December 1994 established on the basis of evidence it had collected "the involvement of the Armenian army as part of its assigned duties in the conflict ..". Such information was gathered by Human Rights Watch from prisoners from the Armenian army captured by Azerbaijan and from Armenian soldiers in Yerevan, the capital of Armenia. Western journalists also reported seeing busloads of Armenian army soldiers entering Nagorny Karabakh from Armenia. Human Rights Watch concluded that the Armenian army troop involvement in Azerbaijan made Armenia a party to the conflict and made the war an international armed conflict involving these two states.[20]

19. That there was and remains a situation of armed confrontation has been recognised by various United Nations organs. The UN Human Rights Committee, for example, has referred with regard to

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[17] Note that Nagorny Karabakh is sometimes written as Nagorno-Karabakh or Karabagh. In reality, "Nagorny Karabakh" is a Russian translation of the original name in Azerbaijani language – "Dağlıq Qarabağ" (pronounced as "Daghlygh Garabagh"), which literally means mountainous Garabagh. The word "Garabagh" is translated from Azerbaijani as "Black Garden". In order to avoid confusion the widely referred term "Nagorny Karabakh" will be used hereinafter.

[18] See T. de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* 170 (2003).

[19] See Statement by the Ministry of Foreign Affairs of the Republic of Azerbaijan, annexed to a Letter from the Permanent Representative of Azerbaijan to the President of the Security Council (Doc. S/23926, 14 May 1992).

[20] *Seven Years of Conflict in Nagorno-Karabakh*, New York, 1994, pp. 69-73.

Azerbaijan explicitly to "[t]he situation of armed conflict with a neighbouring country".[21] The Committee on the Elimination of Racial Discrimination noted in its Concluding Observations on Azerbaijan on 12 April 2001 that:

> "After regaining independence in 1991, the State party was soon engaged in war with Armenia, another State party. As a result of the conflict, hundreds of thousands of ethnic Azerbaijanis and Armenians are now displaced persons or refugees. Because of the occupation of some 20 per cent of its territory, the State party cannot fully implement the Convention".[22]

20. Further, this Committee proceeded to "express its concern about the continuation of the conflict in and around the Nagorny-Karabakh region of the Republic of Azerbaijan", a conflict which "undermines peace and security in the region and impedes implementation of the Convention".[23] Concern with "the conflict in the Nagorny-Karabakh region" was also expressed in the Committee's Concluding Observations on Azerbaijan on 14 April 2005.[24]

21. A similar position has been adopted by the UN Committee on Economic, Social and Cultural Rights. In its Concluding Observations on Azerbaijan on 22 December 1997, it was noted that "the State party is also faced with considerable adversity and instability due to an armed conflict with Armenia".[25] The Committee also referred to the "conflict with Armenia" in its Concluding Observations on Azerbaijan on 14 December 2004.[26]

22. The US Department of State's Country Reports on Human Rights Practices for Armenia 2006, for example, noted that:

> "Armenia continues to occupy the Azerbaijani territory of Nagorno-Karabakh and seven surrounding Azerbaijani territories. All parties to the Nagorno-Karabakh conflict have laid landmines along the 540-mile border with Azerbaijan and along the line of contact".[27]

23. The US Department of State's Country Reports on Human Rights Practices for Azerbaijan 2006 stated that:

> "Armenia continued to occupy the Azerbaijani territory of Nagorno-Karabakh and seven surrounding Azerbaijani territories. During the year, incidents along the militarized line of contact separating the sides as a result of the Nagorno-Karabakh conflict again resulted in numerous casualties on both sides. Reporting from unofficial sources indicated approximately 20 killed and 44 wounded, taking into account both military and civilian casualties on both sides of

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[21] See the Concluding Observations of the Human Rights Committee: Azerbaijan, 3 August 1994, CCPR/C/79/Add. 38, at para. 2. The reference to "armed conflict" was repeated in the Committee's Concluding Observations on Azerbaijan on 12 November 2001, CCPR/CO/73/AZE, at para. 3.
[22] CERD/C/304/Add.75, at para. 3.
[23] *Ibid*, at para. 7.
[24] CERD/C/AZE/CO/4, at para. 10.
[25] E/C.12/1/Add.20, at para. 12.
[26] E/C.12/1/Add.104, at para. 11.
[27] <http://www.state.gov/g/drl/rls/hrrpt/2006/78799.htm>.

> the line of contact. According to the national agency for mine actions, landmines killed two persons and injured 15 others during the year".[28]

24. Further, the Freedom House Report on Azerbaijan for 2006 states that:

> "The Azerbaijani government continued to have no administrative control over the self-proclaimed Nagorno-Karabakh Republic (NKR) and the seven surrounding regions (Kelbajar, Gubatli, Djabrail, Fizuli, Zengilan, Lachin, and Agdam) that are occupied by Armenia. This area constitutes about 17 percent of the territory of Azerbaijan".[29]

while the International Crisis Group's Report on Nagorny Karabakh of 11 October 2005 notes in its Executive Summary that:

> "Armenia is not willing to support withdrawal from the seven occupied districts around Nagorno-Karabakh, or allow the return of Azerbaijani internally displaced persons (IDPs) to Nagorno-Karabakh, until the independence of Nagorno-Karabakh is a reality".[30]

25. The Security Council has consistently reaffirmed both the sovereignty and territorial integrity of Azerbaijan and the inadmissibility of the use of force for the acquisition of territory. It has further consistently recognised that Nagorny Karabakh is part of Azerbaijan and called on a number of occasions for the withdrawal of the occupying forces from all the occupied territories of Azerbaijan.

26. Security Council resolution 822 (1993) called for "the immediate cessation of all hostilities and hostile acts with a view to establishing a durable cease-fire, as well as immediate withdrawal of all occupying forces from the Kelbajar district and other recently occupied areas of Azerbaijan". Resolution 853 (1993) condemned "the seizure of the district of Agdam and of all other recently occupied areas of the Azerbaijani Republic" and demanded the "the immediate, complete and unconditional withdrawal of the occupying forces involved from the district of Agdam and all other recently occupied areas of the Azerbaijani Republic", while resolution 874 (1993) repeated the call for the "withdrawal of forces from recently occupied territories". Resolution 884 (1993) reaffirmed the earlier resolutions, condemned the occupation of the Zangelan district and the city of Goradiz in the Azerbaijani Republic and demanded the "unilateral withdrawal of occupying forces from the Zangelan district and the city of Goradiz, and the withdrawal of occupying forces from other recently occupied areas of the Azerbaijani Republic".

27. Resolutions 853 (1993) and 884 (1993) further called upon the Government of the Republic of Armenia to "continue to exert its influence" to achieve compliance with Security Council resolutions, as did the statement made by the President of the Security Council on 18 August 1993.[31]

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[28] <http://www.state.gov/g/drl/rls/hrrpt/2006/78801.htm>.
[29] <http://www.freedomhouse.org/template.cfm?page=47&nit=390&year=2006>.
[30] "Nagorno-Karabakh: A Plan for Peace", Report No. 167, p. I.
[31] S/26326, 18 August 1993.

28. The General Assembly of the United Nations has also included on its agenda from 2004, an item entitled "The Situation in the Occupied Territories of Azerbaijan". On 14 March 2008, the Assembly adopted resolution 62/243, including the following substantive provisions:

> "1. *Reaffirms* continued respect and support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders;
>
> 2. *Demands* the immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan;
>
> 3. *Reaffirms* the inalienable right of the population expelled from the occupied territories of the Republic of Azerbaijan to return to their homes, and stresses the necessity of creating appropriate conditions for this return, including the comprehensive rehabilitation of the conflict-affected territories;
>
> 5. *Reaffirms* that no State shall recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan, nor render aid or assistance in maintaining this situation".

29. The report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, dated 19 November 2004, declared that:

> "Armenians from Armenia had participated in the armed fighting over the Nagorno-Karabakh region besides local Armenians from within Azerbaijan. Today, Armenia has soldiers stationed in the Nagorno-Karabakh region and the surrounding districts, people in the region have passports of Armenia, and the Armenian government transfers large budgetary resources to this area".[32]

30. Resolution 1416 (2005), adopted on 25 January 2005 by the Parliamentary Assembly of the Council of Europe, noted particularly that "[c]onsiderable parts of the territory of Azerbaijan are still occupied by Armenian forces" and reiterated that "the occupation of foreign territory by a member state constitutes a grave violation of that state's obligations as a member of the Council of Europe."

31. The International Crisis Group noted in its September 2005 report that "[a]ccording to an independent assessment, there are 8,500 Karabakh Armenians in the army and 10,000 from Armenia" and that "many conscripts and contracted soldiers from Armenia continue to serve in NK [Nagorny Karabakh]", while "[f]ormer conscripts from Yerevan and other towns in Armenia have told Crisis Group they were seemingly arbitrarily sent to Nagorno-Karabakh and the occupied districts immediately after presenting themselves to the recruitment bureau. They deny that they ever volunteered to go to Nagorno-Karabakh or the adjacent occupied territory". It was further noted that "[t]here is a high degree of integration between the forces of Armenia and Nagorno-Karabakh".[33]

[32] David Atkinson, "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference", Explanatory Memorandum, para. 6.
[33] "Nagorno-Karabakh: Viewing the Conflict from the Ground", Report no. 166, 14 September 2005, pp. 9-10.

32. The above indicative materials demonstrate clearly that the regular armed forces of the Republic of Armenia took direct part in the capture of Nagorny Karabakh and seven surrounding regions. Further, Armenia has sustained the existence of the "Republic of Nagorny Karabakh", an illegally created and entirely unrecognised entity within the internationally recognised territory of Azerbaijan, by a variety of political and economic means, including the maintenance of military forces in the occupied territories and on the line of contact.

33. It has been internationally recognised that Azerbaijani territories are under occupation and that Armenia has been actively involved in the creation and maintenance of that situation. Accordingly, Armenia is an occupying power within the meaning of the relevant international legal provisions. Article 6 of Geneva Convention IV declares that the Convention applies "from the outset of any conflict or occupation mentioned in article 2", so that it clearly applies as from the moment that Armenian forces entered Azerbaijani territory and will continue so to do until their final withdrawal.[34]

a) Armenia's Duties as an Occupier of Azerbaijani Territory

1) General

34. In the official statement of the ICRC delivered by Thürer in 2005, the following was noted with regard to the duties of an occupier in the light of the applicable law:

> "the occupying power must not exercise its authority in order to further its own interests, or to meet the interests of its own population. In no case can it exploit the inhabitants, the resources or other assets of the territory under its control for the benefit of its own territory or population. Any military occupation is considered temporary in nature; the sovereign title does not pass to the occupant and therefore the occupying powers have to maintain the *status quo*. They should thus respect the existing laws and institutions and make changes only where necessary to meet their obligations under the law of occupation, to maintain public order and safety, to ensure an orderly government and to maintain their own security".[35]

35. Article 43 of the Hague Regulations provides the essential framework of the law of occupation. It notes that:

> "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety [*l'ordre et la vie publics*], while respecting, unless absolutely prevented, the laws in force in the country".

[34] See Pictet, *Geneva Convention IV*, p. 60 with which the official statement of the International Committee of the Red Cross ("ICRC") delivered by D. Thürer on 21 October 2005 agrees, <http://www.icrc.org/web/eng/siteeng0.nsf/ htmlall/occupation-statement-211105?opendocument>. See also Roberts, "Military Occupation", *loc. cit.*, p. 256 and *Construction of a Wall*, ICJ Reports, 2004, pp. 136, 174, noting that Geneva Convention IV applies when an armed conflict between two contracting parties exists.

[35] <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/occupation-statement-211105?opendocument>.

36. Further, the International Court of Justice has emphasised that an occupying power is under an obligation under article 43:

> "to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force [in the occupied area]. This obligation comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party".[36]

37. Article 43 has been described as the "gist" of the law of occupation and the culmination of prescriptive efforts made in the nineteenth century and thus recognised as expressing customary international law.[37] The key features of this provision read together create a powerful presumption against change with regard to the occupying power's relationship with the occupied territory and population, particularly concerning the maintenance of the existing legal system, while permitting the occupier to "restore and ensure" public order and safety. While the balance between the two is not always clear, especially with regard to extended occupations, it is clear that the occupying power does not have a free hand to alter the legal and social structure in the territory in question and that any form of "creeping annexation" is forbidden. As Benvestisti has pointed out:

> "the administration of the occupied territory is required to protect two sets of interests: first, to preserve the sovereign rights of the ousted government, and, second, to protect the local population from exploitation of both their persons and their property by the occupant".[38]

2) Protection of the Existing Local Legal System

38. International humanitarian law provides for the keeping in place of the local legal system during occupation. This is a fundamental element in the juridical protection of the territory and population as they fall under the occupation of a hostile power. Article 43 of the Hague Regulations expressly provides for this in noting that the occupying power must respect local laws "unless absolutely prevented", a high threshold which may be only rarely achieved. This is because occupation is a temporary factual situation with minimal modification of the underlying legal structure with regard to the territory in question. The term "laws in force" is to be interpreted widely to include not only laws in the strict sense, but also constitutional provisions, decrees, ordinances, court precedents as well as administrative regulations and executive orders.[39]

39. Article 43 of the Hague Regulations has been supplemented by Geneva Convention IV. Article 64 provides, for example, that the penal laws of the occupied territory shall remain in force, unless they constitute a threat to the security of the occupying power. Occupying powers may however,

[36] *Congo v Uganda*, ICJ Reports, 2005, pp. 168, 231.
[37] See Benvenisti, *Op.cit.*, pp. 7-8. See also M. Sassòli, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers", 16 European Journal of International Law, 2005, p. 661 and A. Roberts, "Transformative Military Occupation", 100 American Journal of International Law, 2006, p. 580.
[38] *Op.cit.*, p. 28. See also S. Wills, "Occupation Law and Multi-National Operations: Problems and Perspectives", 77 British Year Book of International Law, pp. 256, 264.
[39] See Sassòli, *loc. cit.*, pp. 668-9.

under the second paragraph to this provision, subject the population of the occupied territory to "provisions which are essential to enable the occupying power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them". However, this is to be restrictively interpreted and the difference between preserving local laws and providing for "provisions" which are "essential" is clear and significant. They mean not only that the legal system as such is unaffected save for the new measures which are not characterised as such as laws, but that the test for the legitimacy of these imposed measures is that they be "essential" for the purposes enumerated. The fact that the French term *indispensable* is used clearly demonstrates the restrictive nature of the reservation.

40. Article 64 also provides that "the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws", while article 54 provides that:

> "the Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience".

41. In other words, while the occupying power may enact penal provisions of its own in order to maintain an orderly administration, such competence is constrained by the need to preserve the existing local legal system and by the need to comply with the rule of law.[40] Further, protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.[41] Representative of the delegates of the International Committee of the Red Cross ("ICRC") have the right to go to all places where protected persons are found, particularly places of internment, detention and work.[42]

42. In addition to the preservation of the local legal system, article 56 provides that to the fullest extent of the means available to it, the occupying power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories are to be allowed to carry out their duties.[43]

3) Property Rights

43. Article 46 of the Hague Regulations provides that, *inter alia*, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Article 46 also specifies that private property cannot be confiscated, except where requisitioned for necessary military

[40] See articles 67 and 69-75 of Geneva Convention IV and article 75 of Additional Protocol I.
[41] Article 76 of Geneva Convention IV.
[42] Article 143.
[43] See also article 14 of Additional Protocol I.

purposes, but even then requisitioning must take into account the needs of the civilian population.[44] Pillage is forbidden,[45] while reprisals against the property of protected persons are prohibited.[46]

44. Article 55 states that the occupying state shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile state, and situated in the occupied country and that it must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct. In addition, article 56 provides that the property of municipalities, institutions dedicated to religion, charity and education, the arts and sciences, even when state property, shall be treated as private property and that all seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

45. Article 53 of Geneva Convention IV prohibits the destruction by the occupying power of any real or personal property belonging individually or collectively to private persons, or to the state, or to other public authorities, or to social or cooperative organizations, except where such destruction is rendered absolutely necessary by military operations.[47] It is a grave breach of the Convention to engage in extensive destruction not so justified.[48]

4) Protecting Protected Persons

46. A number of provisions exist detailing the treatment of persons within the occupied territory (termed protected persons under the convention). The major ones are as follows:

i) It is prohibited to employ protected persons for work outside the occupied territory (article 51 (3)).

ii) Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity All protected persons shall be treated with the same consideration by the party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion (article 27).

iii) The party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred (article 28).

iv) No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties (article 31).

[44] Article 52 of the Hague Regulations and article 55 of Geneva Convention IV.
[45] Article 47 of the Hague Regulations.
[46] Article 33 of Geneva Convention IV.
[47] See also article 23 (g) of the Hague Regulations.
[48] Article 147 of Geneva Convention IV.

v) There is a prohibition on taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents (article 32).

vi) No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited and reprisals against protected persons and their property are prohibited (article 33).

vii) The taking of hostages is prohibited (article 34).

5) Missing Persons

47. Special provisions apply with regard to missing persons. Article 26 of Geneva Convention IV provides that each party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations.

48. Article 33 of Additional Protocol I, which is specifically entitled "Missing Persons", provides that:

> "1. As soon as circumstances permit, and at the latest from the end of active hostilities, each party to the conflict shall search for the persons who have been reported missing by an adverse party. Such adverse party shall transmit all relevant information concerning such persons in order to facilitate such searches.
>
> 2. In order to facilitate the gathering of information pursuant to the preceding paragraph, each party to the conflict shall, with respect to persons who would not receive more favourable consideration under the Conventions and this Protocol:
>
> (a) Record the information specified in article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention;
>
> (b) To the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation.
>
> 3. Information concerning persons reported missing pursuant to paragraph I and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the International Committee of the Red Cross and its Central Tracing Agency, each party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency.

> 4. The parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse party while carrying out the missions in areas controlled by the adverse party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties".

49. As a party to Additional Protocol I, Armenia is bound by the above provision.

50. Further, in resolution 59/189, adopted by the United Nations General Assembly on 20 December 2004, states parties to an armed conflict were called up to take all appropriate measures to prevent persons from going missing in connection with armed conflict and to account for persons reported missing as a result of such a situation. The resolution also reaffirmed both the right of families to know the fate of their relatives reported missing in connection with armed conflicts; and that each party to an armed conflict, as soon as circumstances permit and, at the latest, from the end of active hostilities, shall search for the persons who have been reported missing by an adverse party. States parties to an armed conflict were called upon to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing in connection with the armed conflict.[49]

51. Resolution 1553 (2007) of the Council of Europe Parliamentary Assembly emphasised that the issue of missing persons was a "humanitarian problem with human rights and international humanitarian law implications" and that time was of the essence when seeking to solve the issue of the missing. The resolution noted that the Parliamentary Assembly was concerned by the "continuing allegations of secret detention of missing persons". The resolution also gave the figure of 4,499 Azerbaijanis listed as missing as a result of the Nagorny Karabakh conflict[50] and declared that:

> "The right to know the fate of missing relatives is ... firmly entrenched in international humanitarian law. Furthermore, state practice establishes as a norm of customary international law, applicable in both international and non-international armed conflicts, the obligations of each party to the armed conflict to take all feasible measures to account for persons reported missing as a result of armed conflict, and to provide their family members with any information it has on their fate. The right to know is also anchored in the rights protected under the European Convention on Human Rights, notably Articles 2, 3, 5, 8, 10 and 13".

6) Prohibition on Settlements in Occupied Territories

52. Article 49 of Geneva Convention IV provides that "the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies". This constitutes the basis and expression of a rule of law prohibiting the establishment of settlements in the occupied territories consisting of the population of the occupying power or of persons encouraged by the

[49] See also General Assembly resolutions 61/155, adopted on 19 December 2006, and 63/183, adopted on 18 December 2008.

[50] According to the State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, 4210 citizens of Azerbaijan are registered missing in connection with the conflict as of 1 January 2008, of them 47 children, 256 women and 355 elderly.

occupying power with the intention, expressed or otherwise, of changing the demographic balance. The International Court of Justice has noted that this provision:

> "prohibits not only deportations or forced transfer of population such as those carried out during the Second World War, but also any measures taken by an occupying power in order to organise or encourage transfers or parts of its own population into the occupied territory".[51]

53. Such activity also constitutes a grave breach of Additional Protocol I[52] and, indeed, a breach of Armenia's own domestic legislation.[53] Attempts to change the demographic composition of occupied territories have also been condemned by the Security Council.[54] The Committee on the Elimination of Racial Discrimination in its Decision 2 (47) of 17 August 1995 on the situation in Bosnia and Herzegovina declared that "any attempt to change or to uphold a changed demographic composition of an area, against the will of the original inhabitants, by whichever means is a violation of international law",[55] while Special Rapporteur Al-Khasawneh in his Final Report on "Human Rights Dimensions of Population Transfer" for the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities underlined the illegality of population transfers and their prohibition under international human rights and humanitarian law.[56] This view was endorsed by the Sub-Commission in its consideration of the Report.[57]

54. Practice shows clearly that Armenia has violated this prohibition. Significant numbers of Armenian settlers have been encouraged to move into the occupied areas, in particular the Lachin area, an area that had been especially depopulated of its Azerbaijani inhabitants. There have been numerous independent reports of the introduction of settlers into the occupied areas.

55. The Report of the OSCE Fact-Finding Mission to the Occupied Territories of Azerbaijan Surrounding Nagorny Karabakh, 2005, concluded that the settlement figures were approximately as follows: 1,500 in Kelbajar district; 800 to 1,000 in Agdam district; under 10 in Fizuli district; under 100 in Jebrail district; 700 to 1,000 in Zangelan district and from 1,000 to 1,500 in Kubatly district.[58] The report also noted that some 3,000 settlers lived in Lachin town[59] and emphasised that "[s]ettlement incentives are readily apparent".[60] The US Committee for Refugees and Immigrants in its World Refugee Survey 2002 Country Report on Armenia stated that:

[51] *Construction of a Wall*, ICJ Reports, 2004, pp. 136, 183.
[52] See article 85 (4) (a) defining as a grave breach of the Protocol: "The transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention". It also amounts to a war crime under the Statute of the International Criminal Court 1998, see article 8 (2) b (viii).
[53] See J.M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, vol I: Rules*, ICRC, Cambridge, 2005, p. 462, footnote 36.
[54] See e.g. resolutions 446, 452, 465, 476, 677.
[55] A/50/18, 1995, para. 26.
[56] E/CN.4/Sub.2/1997/23, 27 June 1997. See also the First Report by Al-Khasawneh and Hatano, E/CN.4/Sub.2/1993/17 and Corr.1, 1993.
[57] Sub-Commission resolution 1997/29.
[58] A/59/747-S/2005/187, at page 26.
[59] *Ibid.*, at page 29.
[60] *Ibid.*, at page 30.

"According to the de facto government of Nagorno-Karabakh, the population of the enclave stood at about 143,000 in 2001, slightly higher than the ethnic Armenian population in the region in 1988, before the conflict. Government officials in Armenia have reported that about 1,000 settler families from Armenia reside in Nagorno-Karabakh and the Lachin Corridor, a strip of land that separates Nagorno-Karabakh from Armenia. According to the government, 875 ethnic Armenian refugees returned to Nagorno-Karabakh in 2001. Most, but not all, of the ethnic Armenian settlers in Nagorno-Karabakh are former refugees from Azerbaijan. Settlers choosing to reside in and around Nagorno-Karabakh reportedly receive the equivalent of $365 and a house from the de facto authorities".[61]

56. In a paper prepared by Anna Matveeva on "Minorities in the South Caucasus" for the ninth session (May 2003) of the Working Group on Minorities of the UN Sub-Commission on Promotion and Protection of Human Rights, the following was stated:

"A policy of resettlement in areas held by the Armenian forces around Karabakh ('occupied territories' or 'security zone') which enjoy relative security has been conducted since 1990s. Applications for settlement are approved by the governor of Lachin who tends to mainly accept families. Settlers normally receive state support in renovation of houses, do not pay taxes and much reduced rates for utilities, while the authorities try to build physical and social infrastructure".[62]

57. The International Crisis Group report of September 2005 reported that:

"Stepanakert[63] considers Lachin for all intents and purposes part of Nagorno-Karabakh. Its demographic structure has been modified. Before the war, 47,400 Azeris and Kurds lived there: today its population is some 10,000 Armenians, according to Nagorno-Karabakh officials. The incentives offered to settlers include free housing, social infrastructure, inexpensive or free utilities, low taxes, money and livestock. In the town centre, up to 85 percent of the houses have been reconstructed and re-distributed. New power lines, road connections and other infrastructure have made the district more dependent upon Armenia and Nagorno-Karabakh than before the war".[64]

58. The International Crisis Group report of October 2005 stated that:

"The interest in Lachin seems to be based on more than security. Stepanakert, with Armenia's support, has modified the district's demographic structure, complicating any handover... Stepanakert considers Lachin for all intents and purposes part of Nagorno-Karabakh and has

[61] <http://refugees.org/countryreports.aspx?__VIEWSTATE=dDwxMTA1OTA4MTYwOztsPENvdW50cnlERDpH b0J1dHRvbjs%2BPrImhOOqDI29eBMz8b04PTi8xjW2&cid=312&subm=&ssm=&map=&_ctl0%3ASearchInput=+KEYWORD+SEARCH &CountryDD%3ALocationList>.
[62] E/CN.4/Sub.2/AC.5/2003/WP.7, 5 May 2003 at pages 34-35.
[63] Note that the name of the town was Khankendi until September 1923, when it was renamed after bolshevik leader Stepan Shaumian. Although the Azerbaijani authorities subsequently restored the original name of the town, it is still referred to by the Armenians as "Stepanakert".
[64] *Op.cit.*, p. 7.

established infrastructure and institutions in clear violation of international law prohibitions on settlement in occupied territories".[65]

59. Accordingly, Armenia's breach of this important rule of international humanitarian law has been clearly established.

7) Application to Subordinate Local Administrations

60. Geneva Convention IV provides that for the continued existence of convention rights and duties irrespective of the will of the occupying power. Article 47 in particular provides that:

> "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory".

61. In particular, the rights provided for under international humanitarian law cannot be avoided by recourse to the excuse that another party is exercising elements of power within the framework of the occupation. This is the scenario that Roberts has referred to in noting that occupying powers often seek to disguise or limit their own role by operating indirectly by, for example, setting up "some kind of quasi-independent puppet regime".[66] It is clear, however, that an occupying power cannot evade its responsibility by creating, or otherwise providing for the continuing existence of, a subordinate local administration. The UK Manual of the Law of Armed Conflict has, for example, provided as follows:

> "The occupying power cannot circumvent its responsibilities by installing a puppet government or by issuing orders that are implemented through local government officials still operating in the territory".[67]

62. Accordingly, Armenia is responsible as the occupying power not only for the actions of its own armed forces and other organs and agents of its government, but also for the actions of its subordinate local administration in the occupied territories, including the forces and officials of the so-called "Republic of Nagorny Karabakh".

[65] *Op.cit.*, p. 22. See also the full analysis of the settlement programme presented by the Permanent Representative of Azerbaijan to the UN in November 2004, A/59/568.
[66] "Transformative Military Occupation: Applying the Laws of War and Human Rights", 100 American Journal of International Law, 2006, pp. 580, 586.
[67] *Op.cit.*, p. 282.

3. The Application of International Human Rights Law to Occupations

63. In addition to the traditional rules of humanitarian law, international human rights law is now seen as in principle applicable to occupation situations. The International Court of Justice has interpreted article 43 of the Hague Regulations to include:

> "the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third state".[68]

64. More generally, the International Court of Justice has discussed the relationship between international humanitarian law and international human rights law. In its advisory opinion on the *Legality of the Threat of Use of Nuclear Weapons*, the Court emphasised that "the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency" and in such cases the matter will fall to be determined by the applicable *lex specialis*, that is international humanitarian law.[69]

65. The Court returned to this matter in its advisory opinion on the *Construction of a Wall*, where it declared more generally that:

> "the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind found in Article 4 of the International Covenant on Civil and Political Rights".[70]

66. As to the relationship between international humanitarian law and human rights law, the Court noted that there were three possible situations. First, some rights might be exclusively matters of humanitarian law, some rights might be exclusively matters of human rights law and some matters may concern both branches of international law.[71] It was essentially a question of interpretation of the particular instrument in question. In particular, the jurisdiction of states, while primarily territorial, may sometimes be exercised outside the national territory and in such a situation the International Covenant and other relevant human rights treaties had to be applied by state parties. This was an approach that was deemed consistent with both the *travaux préparatoires* of, for example, the International Covenant on Civil and Political Rights and with the constant practice of the Human Rights Committee established under it.[72]

67. The Court concluded by affirming that the International Covenants on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on

[68] *Congo v Uganda*, ICJ Reports, 2005, pp. 168, 231 and 242 and following.
[69] ICJ Reports, 1996, pp. 226, 239.
[70] ICJ Reports, 2004, pp. 136, 178.
[71] *Ibid.*
[72] *Ibid.*, pp. 179-82.

the Rights of the Child were "applicable in respect of acts done by a state in the exercise of its jurisdiction outside of its own territory".[73]

68. It is also worth point out the applicability of the general principle of state responsibility for the acts of its organs which would obviously include members of its armed forces acting abroad.[74] The Court interestingly referred in addition in the *Construction of a Wall* case to the prolonged occupation question and to the applicability of the International Covenant on Economic, Social and Cultural Rights.[75]

69. The Court returned to the question of the relationship between international humanitarian law and international human rights law by reaffirming that:

> "international human rights instruments are applicable 'in respect of acts done by a state in the exercise of its jurisdiction outside its own territory', particularly in occupied territories".[76]

70. Accordingly, it is now accepted that the law applicable in occupation situations includes multilateral human rights instruments to which the occupying power is a party. This means inevitably not only that the organs and agents of the occupying power must act in conformity with the provisions of such instruments, but also that the population is entitled to the benefit of their application. Thus, the application of human rights law in these situations impacts upon the powers and duties of the occupier and affects the traditional attempts to balance military necessity and humanity in any occupation.

71. Armenia is a party to the following universal human rights conventions as from the date in parenthesis:

i) International Covenant on Civil and Political Rights (23 June 1993) ("ICCPR");

ii) International Covenant on Economic, Social and Cultural Rights (13 September 1993) (ICESCR");

iii) Convention on the Prevention and Punishment of the Crime of Genocide (23 June 1993);

iv) Convention on the Elimination of All Forms of Racial Discrimination (23 June 1993);

v) Convention on the Rights of the Child (23 June 1993);

vi) Convention on the Elimination of All Forms of Discrimination against Women (13 September 1993);

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[73] *Ibid.*, pp. 180 and 181.
[74] See e.g. *Difference Relating to Immunity from Legal Process of a Special Rapporteur*, ICJ Reports, 1999, p. 87 and *Congo v Uganda*, ICJ Reports, 2005, pp. 168, 242. See also Article 4 of the International Law Commission's Articles on State Responsibility, 2001, A/56/10 and General Assembly resolution 56/83 of 12 December 2001.
[75] ICJ Reports, 2004, pp. 136, 181 (emphasis added).
[76] ICJ Reports, 2005, pp. 178, 242-43.

vii) Convention against Torture (13 September 1993).[77]

72. Accordingly, Armenia is bound by the provisions of these conventions not only within its own borders, but also in the occupied territories of Azerbaijan. One may note briefly the relevance of the following obligations by way of example:

i) The obligation to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the particular instrument, without distinction of any kind (article 2, ICCPR and article 2, ICESCR);

ii) Right to life (article 6, ICCPR);

iii) Prohibition of torture and cruel, inhuman and degrading treatment or punishment (article 7, ICCPR and Convention against Torture);

iv) Right to liberty and security of person (article 9, ICCPR);

v) Right to liberty of movement and the right not to be arbitrarily deprived of the right to enter one's own country (article 12, ICCPR);

vi) Right to equality before court and tribunals (article 14, ICCPR) and to equality of protection before the law (article 26, ICCPR);

vii) Prohibition of arbitrary or unlawful interference with privacy, family, home or correspondence (article 17, ICCPR);

viii) Right to freedom of thought, conscience and religion;

ix) Prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (article 20);

x) Rights to peaceful assembly and association (articles 21 and 22, ICCPR);

xi) Right and opportunity, without distinction and without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to have access, on general terms of equality, to public service in one's country (article 25, ICCPR);

xii) Right of persons belonging to minorities not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language (article 27, ICCPR).

[77] Armenia is also a party to the International Convention for the Protection of All Persons from Enforced Disappearance 2006 (10 April 2007). This Convention is not yet in force.

73. In addition, Armenia is also a party to the European Convention on Human Rights. The question of the application of this Convention extraterritorially by states parties has been the subject of a number of important cases.

74. The European Court of Human Rights has interpreted the concept of 'jurisdiction' as it appears under article 1 ("High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention") to include the situation where acts of the authorities of contracting states, whether performed within or outside national boundaries, produce effects outside their own territory.[78] The Court emphasised that:

> "Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when as a consequence of military action whether lawful or unlawful it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration".[79]

75. The Court clarified further that a state's responsibility in exercising effective control over the area outside its national territory "cannot be confined to the acts of its own soldiers or officials [in that area] but must also be engaged by virtue of the acts of the local administration which survives by virtue of [this state's] military and other support".[80] Such responsibility would cover acts of a state supporting the installation of a separatist state within the territory of another state.[81] Responsibility could also be engaged by the acquiescence or connivance of the authorities of a contracting state in the acts of private individuals which violate the convention rights of other individuals within its jurisdiction, particularly with regard to the recognition by a state of the acts of "self-proclaimed authorities which are not recognised by the international community".[82]

76. Accordingly, the responsibility of Armenia for violations of the European Convention of Human Rights in the occupied territory of Azerbaijan is engaged. The relevant rights under this Convention would include the right to life (article 2), the prohibition of torture and inhuman and degrading treatment and punishment (article 3), due process (article 5), fair trial (article 6), the right to private and family life (article 8) and the right to peaceful enjoyment of property (article 1 of Protocol I).

4. Implementation of Armenia's Responsibilities under Applicable International Law

77. To the extent that Armenia has violated the relevant applicable law with regard to the occupation of Azerbaijani territory, it is responsible under international law. That is the essential

[78] See e.g. *Drozd and Janousek v. France and Spain*, Series A, vol. 240, 1992, p. 29. See also *Loizidou v. Turkey*, Judgments of 23 February 1995 and 28 November 1996, *Cyprus v. Turkey*, Judgment of 10 May 2001, *Ilaşcu v Moldova and Russia*, Judgment of 8 July 2004.
[79] Judgment of 23 February 1995 at para. 62. See also Judgment of 28 November 1996 at para. 52, Judgment of 10 May 2001, paras. 75 and following.
[80] Judgment of 10 May 2001 at para. 77 and Judgment of 8 July 2004 at paras. 312 and the following.
[81] Judgment of 8 July 2004, para. 312.
[82] Judgment of 8 July 2004, para 318. See also Judgment of 10 May 2001, para 81.

fact. As article 1 of the Articles on State Responsibility adopted by the International Law Commission on 9 August 2001[83] declares, "[e]very internationally wrongful act of a state entails the international responsibility of that state", while article 2 provides that there is an internationally wrongful act of a state when conduct consisting of an action or omission is attributable to the state under international law and constitutes a breach of an international obligation of the state. This principle has been affirmed in the case-law.[84]

78. It is international law that determines what constitutes an internationally unlawful act, irrespective of any provisions of municipal law.[85] Article 12 stipulates that there is a breach of an international obligation when an act of that state is not in conformity with what is required of it by that obligation, regardless of its origin or character.[86] A breach that is of a continuing nature extends over the entire period during which the act continues and remains not in conformity with the international obligation in question,[87] while the Permanent Court of International Justice has emphasised that "it is a principle of international law, and even a greater conception of law, that any breach of an engagement involves an obligation to make reparation".[88]

79. Any state responsible for an internationally wrongful act is under an obligation to cease that act, if it is continuing, and to offer appropriate assurances and guarantees of non-repetition if circumstances so require.[89] Armenia is under such an international obligation.

80. The question of implementation or enforcement of the relevant responsibility laid down in international humanitarian law and under international human rights law, however, is a separate legal and practical question. There are a number of relevant mechanisms. To the extent that Armenia is in violation of relevant UN treaties, organs created under such conventions (such as the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial Discrimination; the Committee against Torture etc.) possess the jurisdiction to monitor and hold to account states, including Armenia, that have breached the binding provisions in question. The same is true of relevant regional conventions, in particular the European Convention on Human Rights, with the European Court of Human Rights being a particularly active body and one capable as a court of producing binding decisions.

81. International humanitarian law has its own implementation processes. Parties to the 1949 Geneva Conventions and to Additional Protocol I undertake to respect and to ensure respect for the instrument in question,[90] and to disseminate knowledge of the principles contained therein.[91] A

[83] Commended to governments in General Assembly resolution 56/83. See also General Assembly resolutions 59/35 and 62/61.
[84] See e.g. *Chorzów Factory* case, PCIJ, Series A, No. 9, p. 21 and the *Rainbow Warrior* case, 82 International Law Reports, p. 499.
[85] Article 3.
[86] See the *Gabčikovo–Nagymaros Project* case, ICJ Reports, 1997, pp. 7, 38.
[87] See article 14. See also e.g. the *Rainbow Warrior* case, 82 International Law Reports, p. 499; the *Gabcikovo-Nagymaros (Hungary v Slovakia)* case, ICJ Reports, 1997, pp. 7, 54; *Genocide Convention (Bosnia v Serbia)* case, ICJ Reports, 2007, para. 431; *Loizidou* v. *Turkey*, Merits, European Court of Human Rights, Judgment of 18 December 1996, paras. 41–7 and 63–4; and *Cyprus* v. *Turkey*, European Court of Human Rights, Judgment of 10 May 2001, paras. 136, 150, 158, 175, 189 and 269.
[88] The *Chorzów Factory* case, PCIJ, Series A, No. 17, 1928, p. 29; 4 AD, p. 258. See also the *Corfu Channel* case, ICJ Reports, pp. 4, 23.
[89] Article 30. See also the *Rainbow Warrior* case, 82 International Law Reports, pp. 499, 573.
[90] Common article 1.
[91] See e.g. article 144 of Geneva Convention IV and article 83 of Additional Protocol I.

variety of enforcement methods also exist, although the use of reprisals has been prohibited.[92] One of the means of implementation is the concept of the Protecting Power, appointed to look after the interests of nationals of one party to a conflict under the control of the other, whether as prisoners of war or occupied civilians. Such a power must ensure that compliance with the relevant provisions has been effected and that the system acts as a form of guarantee for the protected person as well as a channel of communication for him with the state of which he is a national. However, the drawback of this system is its dependence upon the consent of the parties involved. Not only must the Protecting Power be prepared to act in that capacity, but both the state of which the protected person is a national and the state holding such persons must give their consent for the system to operate.[93]

82. Additional Protocol I also provides for an International Fact-Finding Commission[94] with competence to inquire into grave breaches[95] of the Geneva Conventions and that Protocol or other serious violations, and to facilitate through its good offices the "restoration of an attitude of respect" for these instruments. This body came into being as the International Humanitarian Fact-Finding Commission in 1991 after 20 states parties to the Protocol agreed to accept its competence.[96] The parties to a conflict may themselves, of course, establish an ad hoc inquiry into alleged violations of humanitarian law.[97]

83. An important monitoring and indeed implementation role is played by the International Committee of the Red Cross.[98] This body has a wide-ranging series of functions to perform, including working for the application of the Geneva Conventions and acting in natural and man-made disasters. It has operated in a large number of states, visiting prisoners of war and otherwise functioning to ensure the implementation of humanitarian law.[99] It operates in both international and internal armed conflict situations. It is involved in the Armenia-Azerbaijan conflict.

84. The International Court of Justice in the *Construction of a Wall* case referred to the "special position" of the ICRC concerning execution of Geneva Convention IV, which "must be 'recognised and respected at all times' by the parties pursuant to article 142 of the Convention".[100] In addition, the Eritrea-Ethiopia Claims Commission has noted that the ICRC had been assigned significant responsibilities in a number of articles of the Geneva Convention III (with which it was concerned) both as a humanitarian organization providing relief and as an organization providing necessary and vital external scrutiny of the treatment of prisoners of war.[101]

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[92] See e.g. articles 20 and 51(6) of Additional Protocol I.
[93] See article 9 of Geneva Convention IV.
[94] See article 90 of Additional Protocol I.
[95] See articles 50, 51, 130 and 147 of the four 1949 Conventions respectively and article 85 of Additional Protocol I. A Commission of Experts was established in 1992 to investigate violations of international humanitarian law in the territory of the Former Yugoslavia, see Security Council resolution 780 (1992). See also the Report of the Commission of 27 May 1994, S/1994/674.
[96] See UK Manual, *Op.cit.*, p. 415. As of October 2008, 70 of the 168 states parties to the Protocol (but not including either Armenia or Azerbaijan) have accepted the competence of the Commission, see statement of the President of the Commission dated 23 October 2008, <http://www.ihffc.org/en/documents/IHFFC_PresGA0810. pdf>.
[97] Articles 52, 53, 132 and 149 of the four 1949 Conventions respectively.
[98] See e.g. G. Willemin and R. Heacock, *The International Committee of the Red Cross*, The Hague, 1984, and D. Forsythe, "The Red Cross as Transnational Movement", 30 *International Organisation*, 1967, p. 607.
[99] See e.g. article 142 of Geneva Convention IV.
[100] ICJ Reports, 2004, pp. 136, 175-6.
[101] Partial Award, Prisoners of War, Ethiopia's Claim 4 case, 1 July 2003, paras. 58 and 61-2.

85. It is, of course, also the case that breaches of international humanitarian law or international human rights law may constitute war crimes or crimes against humanity or even genocide for which universal jurisdiction is provided with regard to alleged offenders.[102] In such cases, pursuit of such individuals may be undertaken through the domestic courts of involved or third party states. There is no current international criminal court or tribunal with relevant individual jurisdiction with regard to Armenia. State responsibility in such cases may be enforced through relevant inter-state mechanisms.

5. Conclusions

86. The following conclusions may be reached:

1) The applicable law in the first instance is international humanitarian law, consisting of the Hague Regulations (being part of customary international law), together with Geneva Convention IV and to Addition Protocol I on 7 June 1993 to both of which Armenia is a party;

2) Armenian involvement in the conflict with Azerbaijan gave to that conflict an international character;

3) Armenian involvement in the capture and retention of the Nagorny Karabakh region of Azerbaijan and its surrounding districts was such as to bring the provisions of international humanitarian law into operation;

4) The facts show that Armenia is in occupation of these areas as that term is understood in international humanitarian law;

5) International law precludes the acquisition of sovereignty to territory by the use of force so that the occupation by Armenia of Azerbaijani territory cannot give any form of title to the former state;

6) As an occupying power, Armenia is subject to a series of duties under international law;

7) The core of these duties is laid down in article 43 of the Hague Regulations and focus upon the restoration and ensuring, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country;

8) The presumption in favour of the maintenance of the existing legal order is particularly high and is supplemented by provisions in Geneva Convention IV;

[102] See e.g. A. Cassese, *The International Criminal Court*, 2nd edn, Oxford, 2008; W. Schabas, *An Introduction to the International Criminal Court*, 3rd edn, Cambridge, 2007; R. Cryer, H. Friman, D. Robinson and E. Wilmshurst, *An Introduction to International Criminal Law and Procedure*, Cambridge, 2007; I. Bantekas and S. Nash, *International Criminal Law*, 2nd edn, London, 2003; and G. Werle, *Principles of International Criminal Law*, The Hague, 2005.

9) Private and public property is particularly protected. Private property cannot be confiscated, except where requisitioned for necessary military purposes, but even then requisitioning must take into account the needs of the civilian population;

10) The occupying state is no more than the administrator of public property and must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct;

11) Destruction of private and public property is forbidden, except where such destruction is rendered absolutely necessary by military operations;

12) Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They are to be at all times humanely treated and protected especially against all acts of violence or threats thereof;

13) Armenia as the occupying power is under a special obligation with regard to Azerbaijani missing persons, of whom there are accepted to be 4,210 as of 1 January 2008;

14) Armenia bears a responsibility under international humanitarian law not to establish or facilitate the establishment of settlements of Armenians in the occupied territories;

15) Armenia cannot evade its responsibilities under international humanitarian law by means of its support for a subordinate local administration;

16) In addition to the traditional rules of humanitarian law, Armenia is also bound in its administration of the occupied territories by the provisions of those international human rights treaties to which it is a party;

17) Such treaties include the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture;

18) Armenia is also bound by the European Convention of Human Rights in its occupation of Nagorny Karabakh and surrounding districts;

19) Armenia bears state responsibility for its breaches of international humanitarian law and international human rights law as discussed above and is under an obligation both to cease its violations and make reparation for them;

20) Such obligations under international humanitarian law and under international human rights law may be monitored and implemented by mechanisms in force for Armenia, such as the Human Rights Committee and the European Court of Human Rights, together with ICRC processes;

21) Insofar as war crimes, crimes against humanity and genocide are concerned, individual responsibility may lie and may be implemented through domestic courts in various involved or third party states, while state responsibility may be enforced where possible through relevant inter-state mechanisms.

United Nations S/2009/52

Security Council

Distr.: General
27 January 2009
English
Original: French

Letter dated 27 January 2009 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to the additional capacities for the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) which the Security Council authorized by its resolution 1843 (2008) of 20 November 2008 and which it recalled in its resolution 1856 (2008) of 22 December 2008.

I regret to inform you that, despite the Organization's considerable efforts to generate the additional resources required, in particular through consultations in New York and in a number of capitals, troop-contributing countries have not been as receptive as we had hoped. In all, 49 troop contributors and 12 potential troop contributors have been asked to provide the Mission with the additional troops and resources authorized. The need for robust and highly mobile troops was particularly emphasized. Four countries that are contributing police personnel have also been approached.

The United Nations accepted an official proposal from Bangladesh to provide one infantry battalion, one engineer company and one formed police unit, as well as a proposal from Belgium to provide a C-130 aircraft to the Mission. In addition, five Member States have agreed to send the required intelligence experts to MONUC, albeit without providing the necessary equipment.

Four Member States have expressed interest in providing the second authorized battalion, while two others might provide the two special forces companies. Another Member State indicated that it might be able to provide the second formed police unit. Finally, I received a letter from the Economic Community of Central African States indicating that its member countries were willing to provide certain capacities to the Mission. The Secretariat will continue to assess the expressions of interest that most closely match the Mission's resource requirements. While these expressions of interest are positive, I nevertheless have some concerns to communicate to the Security Council. More than two months after the adoption of resolution 1843 (2008), no formal offers have been made in response to these requests. I am especially concerned about the lack of formal offers of special forces companies.

Equally worrisome is the fact that there have been no commitments or expressions of interest regarding the remaining air assets (one C-130 and 18 utility helicopters) or the deployment of the 200 military training instructors/advisers needed. These resources are essential for the Mission's mobility and rapid reaction capacity, which are vital if it is to fulfil the mandate set out by the Security Council.

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Given the need to deploy the additional resources authorized for MONUC as soon as possible, I would like to renew my appeal to those troop- and police-contributing countries that have the necessary capacities to enable the Mission to discharge its mandate effectively, pursuant to resolution 1856 (2008). I will keep the Security Council regularly informed of the efforts made in this regard.

In the meantime, any efforts by the Security Council to encourage troop-contributing countries to provide the Mission with the necessary resources would be greatly appreciated.

(*Signed*) **Ban** Ki-moon

United Nations A/63/695–S/2009/53

General Assembly
Security Council

Distr.: General
29 January 2009

Original: English

General Assembly
Sixty-third session
Agenda item 99
Measures to eliminate international terrorism

Security Council
Sixty-fourth year

Letter dated 27 January 2009 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General

The Council of Foreign Ministers of the European Union, despite its own belief about and emphasis on the terrorist nature of the so-called Mujahideen-e-Khalq Organization (MKO), decided, on 26 January 2009, to remove the name of this notorious terrorist cult from the European Union's list of terrorist groups by invoking the judgement of the Court of First Instance of the European Court of Justice. By this move, the European Union has insulted and wounded the hearts of the bereaved families of more than 14,000 men, women and children who have fallen victim to the terrorist acts of this cult. The European Union decision has also put on display the selective approach and the double standards with which the European Union deals with the vicious menace of terrorism.

Given the requirements and the logic underpinning the international community's collective efforts to combat terrorism, including those stipulated in the relevant resolutions of the General Assembly and the Security Council, and given the numerous terrorist acts and crimes committed by this terrorist group, which persists in its violence-based behaviour and has made no changes in its terrorist nature or in its approaches that are based on brutal armed actions, the European Union was expected to refrain from making such an unacceptable decision and to maintain this terrorist cult in the European Union's list of terrorist groups. The European Union could have addressed any possible procedural requirements raised by the European Court of Justice and could have provided the Court with further pieces of solid legal documents that so abundantly and plentifully exist and clearly prove the terrorist nature of this cult.

By making this decision, the European Union should not only be accountable to the families of those who have fallen victim to the brutal terrorist acts of the said criminal cult in Iran and Iraq, but also bear the responsibility for the negative and harmful consequences that this decision will have in undermining the collective efforts of the international community in the fight against the atrocious threat of terrorism.

09-22361 (E) 300109

The European Union should bear in mind that such politically motivated approaches in dealing with the menace of terrorism that threatens the lives and the security of all peoples of the globe is unacceptable, is absolutely rejected by international public opinion and will not in any way serve their purpose. Undoubtedly, this decision by the European Union, which has been taken based in narrow political motives, will not change the facts related to the criminal and terrorist nature of the MKO terrorist group, and cannot lead to forgetting the said terrorist group's criminal and terrorist acts in massacring innocent people, nor will it lead to exonerating these terrorists and criminals. Undoubtedly, the international community is fully aware of the terrorist nature of this despicable cult and will not ignore the terrorist threats posed by it.

The Islamic Republic of Iran condemns this decision of the European Union and wishes to remind the European Union of the negative consequences of this unreasonable decision, and stresses that it considers this action as an unwarranted and negative move that would adversely affect the international community's fight against terrorism, and calls upon the European Union to repeal this decision.

I would be grateful if you could have this letter circulated as a document of the General Assembly under agenda item 99, and of the Security Council.

(*Signed*) Mohammad **Khazaee**
Ambassador
Permanent Representative

United Nations S/2009/54

Security Council

Distr.: General
30 January 2009
English
Original: French

Letter dated 29 January 2009 from the Secretary-General addressed to the President of the Security Council

I have the honour to inform you that Mr. Mubarak Mashhoor al-Shahrani (Saudi Arabia), who I appointed on 9 April 2007 (S/2007/190) and reappointed on 7 July 2008 (S/2008/441) to serve as an expert on the Analytical Support and Sanctions Monitoring Team, established pursuant to Security Council resolution 1526 (2004) and extended by Council resolutions 1617 (2005), 1735 (2006) and 1822 (2008), stepped down from this position as from 30 October 2008.

Accordingly, in consultation with the Security Council Committee established pursuant to resolution 1267 (1999), concerning Al-Qaida and the Taliban and associated individuals and entities, and taking into account the requirements set forth in the aforementioned resolutions, I have appointed Mr. Abdulmajeed A. Ababtain (Saudi Arabia) to serve as an expert on the Monitoring Team until 31 December 2009.

(*Signed*) **Ban** Ki-moon

09-22519 (E) 030209 040209

United Nations S/2009/55

Security Council

Distr.: General
2 February 2009
English
Original: French

Letter dated 27 January 2009 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to my letter dated 10 December 2008 (S/2008/777), in which I recommended that the mandate of the United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) should be extended for an additional year, until 31 December 2009. The President of the Security Council, in his letter dated 22 December 2008 (S/2008/778), informed me that the Council had decided to extend the mandate of UNOGBIS until 30 June 2009 and that it would appreciate receiving, by 15 June 2009, my recommendations on the establishment of an integrated United Nations Office in Guinea-Bissau.

In that connection, I wish to inform you of my intention to appoint Mr. Joseph Mutaboba (Rwanda) as my Representative in Guinea-Bissau and Head of UNOGBIS.

I should be grateful if you would bring this letter to the attention of the members of the Security Council.

(*Signed*) **Ban** Ki-moon

09-22433 (E) 020209 020209

United Nations S/2009/56

Security Council

Distr.: General
30 January 2009
English
Original: French

Letter dated 30 January 2009 from the President of the Security Council addressed to the Secretary-General

I have the honour to inform you that your letter dated 27 January 2009 (S/2009/55) concerning your intention to appoint Mr. Joseph Mutaboba (Rwanda) as your Representative in Guinea-Bissau and Head of the United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) has been brought to the attention of the members of the Security Council. They take note of the intention expressed in your letter.

(*Signed*) Jean-Maurice **Ripert**

09-22439 (E) 020209 020209

United Nations S/2009/57

Security Council

Distr.: General
30 January 2009
English
Original: French

Letter dated 27 January 2009 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to Security Council resolution 1864 (2009) dated 23 January 2009, by which the Council authorized extension of the mandate of the United Nations Mission in Nepal (UNMIN) for a further six months, as from the date of the resolution.

Pursuant to resolution 1864 (2009), I intend to appoint Karin Landgren (Sweden) to the post of Representative of the Secretary-General in Nepal and Head of UNMIN.

I should be grateful if you would bring this letter to the attention of the members of the Security Council.

(*Signed*) **Ban** Ki-moon

09-22447 (E) 020209

United Nations S/2009/58

Security Council

Distr.: General
30 January 2009
English
Original: French

Letter dated 30 January 2009 from the President of the Security Council addressed to the Secretary-General

I have the honour to inform you that your letter dated 27 January 2009 (S/2009/57) concerning your intention to appoint Karin Landgren (Sweden) to the post of Representative of the Secretary-General in Nepal and Head of the United Nations Mission in Nepal (UNMIN) has been brought to the attention of the members of the Security Council. They have taken note of the intention expressed in your letter.

(*Signed*) Jean-Maurice **Ripert**
President of the Security Council

09-22454 (E) 020209 020209

United Nations S/2009/59

Security Council

Distr.: General
30 January 2009

Original: English

First report of the Secretary-General on the United Nations Integrated Peacebuilding Office in Sierra Leone

I. Introduction

1. The present report is submitted pursuant to Security Council resolution 1829 (2008), by which the Council authorized, with effect from 1 October 2008, the establishment of the United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) and requested, in paragraph 9, that it be kept informed every four months on the implementation of the mission's mandate. Accordingly, the present report covers the activities of the mission and developments in Sierra Leone from 1 October 2008 to 31 January 2009.

II. Establishment of the United Nations Integrated Peacebuilding Office in Sierra Leone

2. The transition from the United Nations Integrated Office in Sierra Leone (UNIOSIL) to UNIPSIL proceeded as planned, with extensive consultations among United Nations agencies, programmes and funds, culminating in the adoption of a Joint Vision of the United Nations Family for Sierra Leone. That vision reflects a strategic framework that outlines common priority areas as well as joint United Nations operational and logistical arrangements. Accordingly, UNIPSIL brings together the political, development and humanitarian mandates of the United Nations family in Sierra Leone so as to provide integrated support to the Government in fostering peace and stability and advancing social and economic development.

3. UNIPSIL has a total strength of 73, including both international and national staff. The Office is headed by my Executive Representative in Sierra Leone, Michael von der Schulenburg. The mission has a small office to support the work of my Executive Representative and five substantive units, namely, a Political Affairs and Peace Consolidation Section; a Human Rights and Rule of Law Section; a Democratic Institutions Section; a Police and Security Section; and a Joint Strategic Planning Unit.

4. The Planning Unit provides strategic policy support and a coordination mechanism that integrates political, development and humanitarian activities for the entire United Nations system in Sierra Leone. The Unit supports the strategic

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engagement of the Executive Representative and the United Nations system with the Government of Sierra Leone, the major donors and the Peacebuilding Commission.

5. The Political Affairs and Peace Consolidation Section leads the mission's efforts in promoting dialogue and the peaceful resolution of disputes among key national stakeholders with a view to ensuring reconciliation and national cohesion.

6. The Human Rights and Rule of Law Section provides support for the strengthening of the rule of law and the promotion and protection of human rights in Sierra Leone. It provides policy support, technical advice and advocacy for the strengthening of the national Human Rights Commission, as well as the implementation of the recommendations of the Truth and Reconciliation Commission.

7. The Democratic Institutions Section spearheads the efforts of UNIPSIL in providing support for the consolidation and expansion of multiparty democracy and good governance in Sierra Leone. It provides policy and technical advice to Parliament, the Anti-Corruption Commission and the Decentralization Secretariat, including on the issue of public sector reform. The Section collaborates closely with national and local governance institutions in building the capacity of local councils. The Section will also oversee the transfer of United Nations Radio to the Government of Sierra Leone through the formation of an independent broadcasting entity.

8. The Police and Security Section leads the mission's efforts in providing support to the Sierra Leone police, the Office of National Security and other security sector institutions.

III. Political developments

9. The political situation remained stable and positive during the reporting period, as the country continued to build on the momentum created by the peaceful and democratic transfer of power from one elected Government to another in September 2007. Despite a climate of distrust between the former ruling Sierra Leone People's Party (SLPP), now the major opposition party, and the All Peoples' Congress (APC), which is currently in power, the overall interaction between the two major parties continues to evolve in a largely constructive and cordial manner.

10. The Government has made the fight against corruption a key element of its reform platform. To that end, and as part of its anti-corruption agenda, the Government has taken steps aimed at ensuring greater transparency and accountability in public affairs. Under the Open Government Initiative, sponsored by the United Nations Development Programme (UNDP), the President, Ernest Bai Koroma, the Vice-President, Sahr Sam-Sumana, and Government Ministers recently held question-and-answer sessions with the public on economic, political and social issues. The Government also continues to promote a campaign aimed at changing attitudes and has called on the people of Sierra Leone to view with seriousness their civic obligations to the country.

11. On 15 October, the Government established a Commission of Inquiry to examine the use of donor funds by the previous, SLPP, Administration. SLPP complained that the inquiry was not independent and also that it was open-ended.

President Koroma provided strong assurances that the inquiry was not a witch-hunt, but a measure aimed at preventing any misuse of such funds in the future.

12. UNIPSIL maintained close contacts with the political parties and continued to emphasize the need for dialogue and national cohesion in the aftermath of recent national and local elections that witnessed ethnic and regional divides in the country. UNIPSIL also worked to encourage the resumption of political dialogue through the revival of the All Political Parties Association and the rejuvenation of the Political Parties Registration Commission.

13. Chieftaincy disputes remained a major challenge for both the political and the legal processes. On 5 November, the Paramount Chief of Biriwa chiefdom, in Bombali district, was suspended by the Government following a finding by an administrative inquiry that his appointment had not been made in accordance with proper procedure, through an election conducted by the National Electoral Commission. The Paramount Chief had been appointed to office during the SLPP Administration. A judicial commission of inquiry has also been established to review the conclusions of the administrative inquiry. However the suspension of the Paramount Chief continued to generate tensions between the Limba and Mandingo ethnic groups in the community.

14. The Government continued to make concerted efforts to refocus national attention on the massive development challenges facing the country. To that end, it sought to project the image of Sierra Leone not only as a country that had successfully emerged from conflict, but also as a country committed to promoting reforms and broadening its international relationships.

15. In that connection, and in the light of recent security challenges in the subregion, on 10 December Sierra Leone hosted a summit of Heads of State of the Mano River Union. President Koroma welcomed to the summit the President of Liberia, Ellen Johnson-Sirleaf, the President of Cote d'Ivoire, Laurent Gbagbo, and the Prime Minister of Guinea, Ahmed Tidiane Souaré. The leaders reaffirmed their strong commitment to work together to overcome challenges facing the subregion and called for the establishment of joint border security and confidence-building units in all States of the Mano River Union and for strengthened economic and military cooperation, as well as measures to ensure food security.

16. The Yenga border dispute between Guinea and Sierra Leone remained unresolved. However, both countries continue to engage in diplomatic consultations on the matter. The Government established a high-level committee, comprising the Vice-President and the Ministers for Foreign Affairs and International Cooperation, Defence, Internal Affairs and Information, to continue to address the issue.

IV. Economic and social developments

17. Overall macroeconomic performance in 2008 has been mixed. Real growth in gross domestic product in 2008 reached an encouraging 6 per cent, underpinned by expansion in the agriculture, construction and service sectors. However, a slowdown in mining activities following the suspension of operations by Koidu Holdings, as well as the collapse of the second dredge at a Sierra Rutile mining site and the deterioration in the external economic environment, constitute major impediments to overall economic growth.

18. In spite of efforts by the National Revenue Authority to intensify revenue mobilization, domestic revenue collected as at the start of October 2008 was well below that projected. That situation had resulted in the non-observance of one of the performance criteria of the International Monetary Fund (IMF) related to domestic Government revenue. However, in response to remedial actions taken by the Government, the Executive Board of IMF had granted waivers.

19. The third review of the performance of Sierra Leone under a four-year arrangement related to the Poverty Reduction and Growth Facility was completed in December 2008. Subsequently, the Executive Board of IMF approved $16.1 million to augment the country's foreign reserve position to cope with external shocks from the unfolding global financial crisis. The completion of the review allows for the disbursement of about $10.8 million, which would bring total disbursements under the arrangement to about $31.7 million.

20. Potential economic risks facing Sierra Leone in 2009 include a decline in official development assistance, the high cost of food and fuel and reductions in export revenues and remittances from abroad. Funding for the social sectors may be affected. Inflation is likely to maintain its long-term equilibrium level of roughly 10 per cent, perhaps until mid-2009.

21. During the reporting period, infant, child and maternal mortality rates in Sierra Leone sharply decreased. Through a $4.6 million project funded by Irish Aid, the World Health Organization (WHO), the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA) and the World Food Programme, a programme to support reproductive and child health was developed. A pilot district health information system was also established in various parts of the country, and the first Sierra Leone Demographic and Health Survey, supported by UNFPA, UNDP, UNICEF, the United Nations High Commissioner for Refugees (UNHCR), WHO and the Department for International Development of the United Kingdom of Great Britain and Northern Ireland, was conducted.

22. UNIPSIL and the United Nations country team initiated a project to enhance the capacity of the civil society in the districts by providing office space and communication and internet facilities. The project allows for the coordination of the activities of non-governmental organizations and strengthens the collaboration between the United Nations family and civil society.

V. Security developments

23. The security situation in Sierra Leone remains calm and stable. Notwithstanding the recent developments in Guinea, there are no foreseeable external threats to the territorial integrity of Sierra Leone. However, considerable socio-economic challenges, including high food prices and youth unemployment, could pose challenges to the gains achieved in the peace consolidation process.

24. Of immediate concern is the increasing use of Sierra Leone as a trans-shipment point for the trafficking of illegal narcotics from South America to Europe, as evidenced by the seizure at Lungi international airport in July 2008 of more than 700 kg of cocaine. Cocaine trafficking represents the biggest single threat to the security of Sierra Leone, especially since drug trafficking tends to be accompanied

by arms and human trafficking, corruption and the subversion of legitimate State institutions.

25. Another security challenge is piracy. On 9 November, armed pirates attacked two fishing trawlers in Sierra Leone coastal waters. The maritime wing of the Republic of Sierra Leone Armed Forces dispatched two cutters, which confronted the pirates. A trawler was looted during the incident. Four suspected pirates were killed and five others were apprehended. The Government plans to work with its immediate neighbours to establish joint sea patrols along their common coastal waters.

VI. Enhancing democratic institutions

A. Support to Parliament

26. As an independent branch of Government with a multi-party configuration, Parliament has important legislative and oversight duties that have an impact on the peace consolidation, reform and development agenda of the country. However, resource and capacity constraints remain a challenge hindering the effective functioning of Parliament.

27. UNIPSIL, UNDP, UNICEF, the International Organization for Migration and other international partners formed a working group that coordinates international assistance to Parliament. Training workshops were held for parliamentary committees, and proposals for a new organizational structure and for an incentive system for the Parliamentary Service Commission were developed. In addition, with financing from the Peacebuilding Fund, logistical and technical assistance, as well as capacity-building support, was provided to Parliament, in particular to strengthen its oversight committees.

28. Given the critical role Parliament plays in fostering national unity and cohesion, eight regional retreats were organized for 124 parliamentarians and paramount chiefs between October and December 2008. The retreats provided an opportunity to address partisan tendencies, reduce the impact of party politics and ethnicity in the work of Parliament and promote collegiality. Also in December 2008, UNDP and the Inter-Parliamentary Union sponsored a three-day meeting of African parliamentarians and support staff from neighbouring countries to share experiences and lessons on the role of parliament.

B. Support to democratic elections

29. On 10 January, the National Electoral Commission conducted two parliamentary by-elections in the western urban area in Freetown and in Pujehun District, in the southern region. The elections were judged by observers to have been credible and peaceful. APC retained its seat in the western area, while the main opposition party, SLPP, won a seat in Pujehun District, thereby increasing its parliamentary representation from 43 to 44 seats. The election basket fund was used to support the by-elections. Capacity-building programmes for the National Electoral Commission and the Political Parties Registration Commission have also continued, with support from the basket fund.

C. Support to anti-corruption efforts

30. The Government of Sierra Leone continued to take measures aimed at combating corruption. The Anti-Corruption Commission, building on the development of a national anti-corruption strategy, carried out an internal organizational review and decentralized its work. A branch office of the Commission was opened in Makeni, in the northern region, and another office is planned for Koidu, in the eastern region.

31. The Commission also developed strategic partnerships with other national stakeholders. A civil society monitoring group was established to monitor the implementation of the revised national anti-corruption strategy, and arrangements were made for strengthening the capacities of civil society organizations and local councils in addressing corruption. The Peacebuilding Fund approved a project to support the capacity-building of the national anti-corruption strategy secretariat. The secretariat greatly contributed to raising awareness of corruption issues, through a number of consultations and discussions.

32. Following the example set by President Koroma, public officials have been directed by the Commission to declare their assets no later than 30 January 2009, and the Commission initiated the arrest of a High Court judge for alleged receipt of bribes. In a report of 3 October, the Commission raised concerns about the award by the Government of a contract for the supply of 10 MW of electricity to Freetown and observed that procurement rules had not been followed. The Government explained that there had been no acts of unjust enrichment with the award of the contract and that any breaches of the procurement rules were inadvertent and arose from a need to meet a 20 December 2007 deadline imposed by the new Government for the supply of electricity to Freetown.

D. Support to the security architecture of Sierra Leone

33. The major security institutions of the country have continued to show improvement. The strengthening of those institutions in the democratic dispensation is seen as a crucial benchmark for the success of the peace consolidation process.

34. UNIPSIL has provided substantial input in the development of appropriate policing standards for the Sierra Leone police. These include ensuring the availability of credible internal mechanisms for the investigation of complaints against the force. UNIPSIL is also developing funding proposals for the strengthening of the Sierra Leone police local partnership boards, which will enhance police relations with local communities. However, the police force needs continued training in specialized fields, such as airport and border security and the control of illicit drugs, diamonds and other precious minerals, as well as logistical support. Donor assistance will continue to be critical in those areas if the police force is to be able to fulfil its primary responsibilities for internal security.

35. Within the reporting period, UNIPSIL, in collaboration with the Sierra Leone Joint Drug Interdiction Task Force and with the assistance of the Governments of the United States of America and the United Kingdom, developed an action plan to address illicit drug trafficking and organized crime in Sierra Leone. The plan was based on the Regional Action Plan adopted at the Ministerial Conference on Drug

Trafficking as a Security Threat to West Africa, held in Cape Verde in October 2008, and endorsed by the Economic Community of West African States.

36. The development of the action plan was an important accomplishment, as it brought together different security agencies with the common goal of disrupting the illegal smuggling of narcotics into Sierra Leone. With the assistance of UNIPSIL and the Joint Drug Interdiction Task Force stakeholders, standard operating procedures setting out the roles and responsibilities of Task Force members in the investigation of transnational organized crime and drug trafficking were established. UNIPSIL is coordinating the efforts of UNDP, the United Nations Office on Drugs and Crime, and other international partners in developing the capacity of the Task Force.

37. The economic exploitation of the rich marine resources of Sierra Leone and the protection of the country's coastal security are seen as crucial and interrelated issues. In the light of recent acts of piracy, the Government, in cooperation with the United Nations system, has initiated steps to regulate and control its territorial waters. The United Nations and the World Bank are developing a system for the monitoring and control of international shipping movements and will propose a national programme to strengthen the capacity of relevant Government agencies. Such a programme would not only enable the authorities to combat international drug trafficking and other illegal activities, but also provide an excellent opportunity to increase the national income that is derived from marine resources.

38. The reform of the Republic of Sierra Leone Armed Forces has continued with the implementation of the recommendations of the core review, which foresees a force reduction from 10,000 to 8,500. However, funding difficulties remain a challenge. With a view to improving the living conditions of serving members of the armed forces and their families, assistance from the Peacebuilding Fund has been provided for water sanitation facilities in the three major military barracks in Freetown. In addition, with support from the Government of India, 200 housing units were recently constructed. However, the lack of adequate accommodation and related facilities remains a challenge. In addition, logistical support to the army is still required.

E. Decentralization and devolution of authority

39. Overall, the general framework and institutions for the decentralization process are in place, and successful local council elections were conducted in July 2008. However, in addition to the need to build the capacity of the local councils and ministries concerned, there is a need to promote greater awareness in society of the decentralization process. Accelerating the devolution process by transferring more authority to the councils is vital.

40. UNDP and the United Nations Capital Development Fund have supported local capacity-building efforts. On 5 December 2008, the second assessment of the work of local councils over the preceding two-year period began. The principal objective of the exercise is to ensure the improvement of service delivery by the local councils to the citizenry. The results of the assessment will reorient the development priorities of the Decentralization secretariat and ensure compliance of local councils with financial, budgetary and other guidelines.

41. In addition to addressing capacity-building issues, it will be important to complete the ongoing review of the Local Government Act of 2004. In order to address the gaps in the implementation of the Act, a national decentralization task force, through several consultative meetings held in 2008, identified as requiring clarification provisions relating to the following: (a) the role of Parliament and the provincial coordination committees and the relationship between chiefdoms and local councils; (b) the participation of civil society; (c) local revenue collection, (d) a code of conduct for councillors; and (e) constitutional protection of the local council institution. Those preliminary observations will be used to review the national decentralization policy in the first quarter of 2009.

F. Support to media

42. Radio remains the most important means of communication for most of the people of Sierra Leone. It is estimated that about 85 per cent of the population listens regularly to the radio. United Nations Radio plays an important role, given the quality of its programmes and it almost nationwide outreach. Pursuant to Security Council resolution 1620 (2005), the Government and UNIPSIL have agreed on a road map for the transfer of United Nations Radio to an independent public broadcaster.

43. Under current proposals, the State-owned Sierra Leone Broadcasting Service will be transformed into an independent public radio station, the Sierra Leone Broadcasting Corporation. The assets of United Nations Radio will be transferred to the new service. With regard to initial funding for the setting up of the Sierra Leone Broadcasting Corporation, UNIPSIL has continued to engage with international donors, and the response thus far has been positive.

44. UNIPSIL provided technical support for the preparation of draft legislation establishing the new broadcast service, which has been approved by the Cabinet and is awaiting action by Parliament. The legislation will ensure that the management of the new service is in accordance with international standards. During the reporting period, United Nations Radio received, for the second time, an award from a local organization as best electronic media outlet in the country.

G. Support for human rights and the rule of law

45. Generally, Sierra Leone continued to register a consistent trend towards respect for civil and political rights in the country. Free speech and press freedom were generally respected, but the existence of the Public Order Act of 1965, which criminalizes libel, remained a concern for the media.

46. The Child Rights Act, which had been previously adopted, was formally launched in December. In addition, UNIPSIL organized, in collaboration with the Ministry of Education, a national consultative forum on the integration of human rights into the curriculum of secondary schools in Sierra Leone.

47. For the first time in the history of Sierra Leone, there appears to be a change of attitude about female genital mutilation, with some traditional chiefs pledging not to subject anyone under the age of 18 to the practice. The Ministry of Social Welfare,

Gender and Children's Affairs developed a plan relating to the gender justice acts and increased sensitization to women's rights throughout the country.

48. With support from the Peacebuilding Fund and advisory and technical assistance from UNIPSIL, the national Human Rights Commission has become operational, implemented a number of programmes and released its first report on the state of human rights to Parliament. Statutory instruments for the filing of complaints with the Commission and the procedures for conducting investigations on human rights violations were also adopted by Parliament.

49. However, catalytic funding provided through the Peacebuilding Fund will run out in January 2009, and unless additional support is forthcoming from the Government and international partners, the operations of the Commission may be adversely affected. The Commission has therefore has developed a three-year strategic action plan, with technical assistance from UNIPSIL, with the aim of establishing a basket fund for multi- donor support.

50. With funding from the United Kingdom-sponsored Justice Sector Development Programme, as well as the Peacebuilding Fund, and technical and advisory services offered by UNIPSIL and UNDP, legal executives in the judiciary and local court officials have been trained and additional magistrates recruited, and resources, including equipment and vehicles, have been provided to enhance their work. As a result, most of the districts now have resident magistrates, and courts are adjudicating cases on a more regular basis. More than 400 backlog cases have been adjudicated, leading to a reduction in the overcrowding of prisons. However, further efforts will be needed to address overcrowding and to improve the living conditions of prisoners.

51. In the reporting period, UNIPSIL conducted a training programme for 100 police prosecutors and investigators on human rights issues. A programme on gender issues in peacekeeping was also organized for 65 police officers selected for deployment to United Nations missions. UNDP, working jointly with the Government, also launched an $11 million project, "Improving Access to Justice in Sierra Leone 2009-2011", aimed at addressing gaps in the justice sector.

H. Implementation of the recommendations of the Truth and Reconciliation Commission

52. UNIPSIL continued to assist the Government in the implementation of the Truth and Reconciliation Commission recommendations. With catalytic funding of $3.4 million under the Peacebuilding Fund, it is expected that the reparations programme for victims of the civil conflict will begin shortly. However, without additional international support, the sustainability of the programme remains uncertain. One of the foundations for a stronger post-conflict Sierra Leone is to ensure that the tragedies and injustices of the long civil war are remedied. To that end, through the proposed multi-donor trust fund, appeals will continue to be made to support the reparations programme, as well as to help implement the other recommendations of the Commission.

I. Constitutional review process

53. The Lomé Peace Agreement and the Truth and Reconciliation Commission report anticipated the revision of the current Constitution, which was adopted in 1991. Accordingly, the Constitutional Review Commission established by the previous Government recommended the adoption of 136 amendments to the 1991 Constitution and submitted its report to President Koroma over a year ago.

54. UNIPSIL, consistent with its mandate, has indicated to the Government its readiness to provide technical and advisory services for the constitutional review. However, the Government has yet to make a decision on how it intends to proceed with the report of the Constitutional Review Commission. The Government is encouraged to move quickly with the review process and to ensure wider public participation as foreseen in the Lomé Peace Agreement and recommended by the Truth and Reconciliation Commission. The United Nations remains committed to assisting the Government in this process.

VII. Special Court for Sierra Leone

55. The Special Court for Sierra Leone, established to prosecute those who bear the greatest responsibility for the crimes committed during the armed conflict in Sierra Leone, rendered judgements on appeal in two of four cases in 2008, and it plans to complete the third case in 2009 and the final case, against Charles Taylor, which is to take place in The Hague, in October 2010. Because the complete cessation of the activities of the Special Court is anticipated by the end of 2010, intensive planning is under way to establish a mechanism to provide for the Court's residual legal obligations. Key questions that may affect UNIPSIL functions include the transfer and the future use if the site of the Court, and the determination of a location and provisions for its archives.

VIII. Peacebuilding agenda

56. Sierra Leone continues to enjoy relative peace, six years after the end of the conflict. The former rebel forces no longer pose a threat to the stability of the country. However, many of the underlying causes of social deprivation and isolation remain and need to be addressed. For that reason, the Government, its international partners and the United Nations family are moving together in a concerted effort to accelerate peacebuilding in Sierra Leone, drawing in particular from two major policy documents, namely, the President's Agenda for Change and the Joint Vision of the United Nations Family for Sierra Leone, which were issued in tandem in December 2008.

A. Agenda for Change

57. On 1 December 2008, President Koroma issued his Agenda for Change, which lays out the basic policies and priorities of the Government over the next three years and sets out the critical foundation for peacebuilding in Sierra Leone.

58. The Agenda recognizes the country's formidable socio-economic challenges and argues that the primary route out of the extreme poverty that afflicts more than 60 per cent of the population will require the fundamental transformation of the economy of Sierra Leone by combining economic growth with sustained human development. The Agenda identifies the Government's main priorities as enhancing the supply of reliable electricity; promoting economic growth, in particular through agriculture and the exploitation of fisheries; improving the country's infrastructure; and accelerating human development through improved health education and other vital social services. In addition, the prevention of HIV/AIDS and the mitigation of its effects will remain a priority for the Government.

59. In his Agenda for Change, the President identified the continued threat of corruption, the emerging threat of illicit drug trafficking and the increasing threat emanating from large-scale youth unemployment as the three main and immediate risks to peace and stability in Sierra Leone. The President unequivocally reiterated his Government's commitment to tackling those challenges.

60. Funding required to achieve the objectives outlined in the President's Agenda is estimated at $2.1 billion. The Government and its development partners have made commitments to provide $1.2 billion within the medium-term expenditure framework.

B. Joint Vision of the United Nations Family for Sierra Leone

61. In order to channel effectively all available resources for the development of Sierra Leone and to ensure strong coordination, my Executive Representative, in collaboration with national and international stakeholders, developed a Joint Vision of the United Nations Family for Sierra Leone — a common strategy which is fully supported by the United Nations agencies and programmes operating in the country and endorsed by the Government.

62. The Joint Vision brings together the political mandate of UNIPSIL with the development and humanitarian mandates of United Nations agencies, funds and programmes, and defines the contribution of the United Nations system in the implementation of the President's Agenda for Change and the Sierra Leone poverty reduction strategy. In addition to the overall objective of assisting the Government in consolidating peace, the Joint Vision identifies four main programmatic priorities: (a) the economic integration of the rural areas; (b) the engagement of unemployed youth; (c) equitable access to health care; and (d) the enhancement of good governance.

63. The World Bank, the African Development Bank, IMF, the development partners and the Peacebuilding Commission have associated themselves with the Joint Vision. The endorsement will allow for a coherent peacebuilding strategy to be embedded in development assistance to Sierra Leone. It will also help achieve the goals of the Paris Declaration on Aid Effectiveness.

64. On the basis of the priorities set out in the Joint Vision, specific programme interventions will be developed and implemented through a multi-donor trust fund to be administered by UNDP. The trust fund is designed specifically to attract donors who have no representation in Sierra Leone and wish to use the services and capacities of the United Nations family in the country. Furthermore, with a view to

strengthening the United Nations ability to deliver as one, a number of common services have been established. These include the creation of four joint regional United Nations field offices, as well as joint logistical, security, medical and vehicle maintenance services.

IX. Activities of the Peacebuilding Commission

65. Sierra Leone continued to receive the support of the Peacebuilding Commission. With strong leadership from Ambassador Frank Majoor of the Netherlands, Chairman of the country-specific meeting on Sierra Leone, the Commission has served as an important forum for drawing continued attention to the challenges facing the peace consolidation process in the country. It has also provided an opportunity for Sierra Leone to mobilize development assistance. In accordance with its mandate, UNIPSIL provided support for the engagement of the Commission with Sierra Leone, including in assisting with preparations for the second biannual review of the Peacebuilding Cooperation Framework, held in New York on 15 December 2008.

66. More than 90 per cent of the $35 million granted to Sierra Leone from the Peacebuilding Fund has been disbursed for implementation of 14 projects in support of the efforts of the Government of Sierra Leone in critical peacebuilding areas. A total of 4 projects have been completed, and 10 are in progress. A technical committee has made a recommendation to the Steering Committee of the Fund, which is co-chaired by my Executive Representative and the Government of Sierra Leone, that the unallocated funds be used for a number of other important projects, including the ongoing development of an independent national public broadcasting service for Sierra Leone.

67. At its second review meeting of the implementation of the Sierra Leone Peacebuilding Cooperation Framework, the Peacebuilding Commission noted progress made in the areas of anti-corruption, decentralization, local governance, public sector reform and the creation of an enabling environment for private-sector development. At the same time, the Commission called on the Government to redouble its efforts aimed at promoting national unity and inter-party dialogue, as well as implementing the recommendations of the Truth and Reconciliation Commission. The Government was further requested to finalize its aid coordination mechanisms and the second poverty reduction strategy paper. The United Nations and the Commission pledged to support the Government's Agenda for Change, as well as to encourage international assistance to mitigate the threats posed by illicit drug trafficking and piracy.

X. Observations

68. With support from the United Nations and other international partners, Sierra Leone has continued to make progress in the consolidation of peace. However, more remains to be done to make the achievements irreversible, especially by addressing the root causes of the country's recent conflict. In that respect, I am encouraged by the progressive demonstration of the requisite political will shown by the Government of President Koroma to tackle the country's challenges in a forthright and peaceful manner. The successful conduct of the local council polls in July 2008,

following the peaceful presidential and legislative elections in August 2007, demonstrated vividly that a democratic culture has begun to take root in Sierra Leone.

69. As further steps are taken to consolidate the democratic gains made thus far, it is important for all segments of Sierra Leonean society, including the Government, political parties and civil society, to work together to enhance national cohesion and political reconciliation. There is a particularly urgent need for greater efforts to meet crucial socio-economic challenges, including poor infrastructure and an extremely low revenue base.

70. The progress in Sierra Leone is a result of the commitment of its people and leaders to peace and the strong support given by international partners, including the United Nations system. At this crucial juncture of peacebuilding, I appeal to Member States and the international community as a whole to continue to extend support to Sierra Leone, in particular to the implementation of the President's Agenda for Change.

71. Greater efforts are needed to ensure the implementation of the Government's anti-corruption strategy. Illicit drug trafficking, a new phenomenon with huge potential for disrupting the security and socio-economic stability of the country, and, indeed, the region, has to be addressed before it takes root and poses even greater dangers. Youth unemployment remains the most acute concern. Urgent action is therefore required to create employment opportunities with a view to reducing the lingering effects of the marginalization of the country's young people, who constitute the largest segment of the population.

72. The Government of Sierra Leone and the international community should continue to pay close attention to the plight of the victims of the devastating civil war in the country and make sure that they receive the care and rehabilitation they need. In that connection, I wish to draw attention to the planned reparations programme for victims of the civil war, which received initial funding from the Peacebuilding Fund, but whose long-term viability requires additional resources.

73. I commend the efforts made by the Peacebuilding Commission to assist the Government of Sierra Leone in broadening its donor base. Those efforts will need to be intensified in view of the world wide financial crisis, which is likely to affect overseas development assistance. I am equally encouraged by the measures undertaken by the Government to expand and strengthen cooperation with countries in its immediate neighbourhood and beyond.

74. I am especially concerned about the growing threat posed by international drug traffickers who use Sierra Leone as a trans-shipment point. Given the nascent state of State institutions tasked with combating the menace and the likely adverse impact of illegal narcotics on various facets of Sierra Leonean society, it is critical that the country's overall capacity to address this issue be further enhanced, including by assisting the country in combating the growing problem of sea piracy in its coastal waters.

75. In conclusion, I wish to express my sincere appreciation to the international partners of Sierra Leone and other Member States for their continued assistance to the country. I would like to reiterate the continued commitment of the United Nations to supporting the Government of Sierra Leone in its efforts to implement the President's Agenda for Change. I also wish to thank my Executive

Representative, Michael von der Schulenburg, UNIPSIL staff and all members of the United Nations country team for their tireless efforts in implementing the mandate of the mission.

United Nations S/2009/60

Security Council

Distr.: General
30 January 2009

Original: English

Letter dated 30 January 2009 from the Secretary-General to the President of the Security Council

I refer to my letter of 19 December 2008 (S/2008/804), in which I proposed next steps on Somalia, including a package to support the African Union Mission in Somalia (AMISOM), and to assist in building the Somali security and rule-of-law institutions established under the Djibouti peace process. The Security Council approved those proposals in its resolution 1863 (2009), and requested an update, by 30 January 2009, on the precise equipment and services to be provided to AMISOM within the scope of the United Nations logistics capacity support package.

To meet that request, the Secretariat deployed an integrated technical assessment mission, led jointly by the United Nations Political Office for Somalia and the Department of Peacekeeping Operations, including a team of logistics specialists from the Department of Field Support. It visited Addis Ababa and Nairobi from 12 to 26 January 2009 to collect the necessary information and consult the Somali parties, the African Union (AU), AMISOM and other partners on the details of the support required by AMISOM and the Somali parties, as well as arrangements for the implementation of the proposals contained in my letter of 19 December. Although the technical assessment mission was unable to travel to Mogadishu owing to the security situation, it obtained valuable information from the AMISOM Force Commander, senior officials of the African Union, and Somali members of the Joint Security Committee who travelled to Nairobi to meet the mission, as well as representatives of donors supporting AMISOM. A full account of the findings and recommendations of the Mission will be provided to the Council in my forthcoming regular report on Somalia.

Overall, the assessment conducted by the technical assessment mission revealed that the level of support AMISOM has been receiving is very basic, with much of it falling below United Nations standards. In addition, AMISOM is highly dependent on donor funding, under complex arrangements which add a high degree of uncertainty to the planning efforts of the African Union.

AMISOM logistics support is currently predominantly delivered through a multifunctional logistics contract with a commercial contractor. While existing support arrangements are far from optimal, they represent the only lifeline of the Mission, and would need to be maintained in the short term. As I noted in my letter of 31 December 2008 to the President of the Security Council (S/2008/846), given the lead time needed to put in place appropriate support arrangements, the Organization may need to rely on the existing AMISOM logistics arrangements to

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ensure uninterrupted provision of logistics support. In parallel, efforts will be focused on the expedited establishment of more comprehensive support solutions to meet the needs of the full AMISOM deployment of 8,000 authorized troops. New support solutions under resolution 1863 (2009) will comply with United Nations standards. In addition, they will, where applicable and possible, be capable of rapid expansion to meet the needs of a full United Nations peacekeeping deployment, should one be authorized by the Council.

The Department of Field Support is identifying fast-track measures that will have an impact on the ground, prior to the implementation of more extensive support packages, in the areas of supply; engineering; medical support; movement support; aviation; communication and information technology, including public information; surface transport; and repair and maintenance.

One major challenge stems from the need to deliver this level of support within the standards of oversight traditionally associated with a United Nations peacekeeping operation of analogous size. Such a level of oversight calls for a United Nations international footprint on the ground in Somalia, which is at present precluded by the current security situation (phase V). This inherent contradiction must be resolved if we are to achieve our core objectives within the available oversight mechanisms.

It is to be noted that the logistics support package forms only one part of the assistance required to enable AMISOM to remain in place and build up its troop strength to its authorized level of 8,000 personnel. The annex to the present letter sets out the areas in which AMISOM would receive support from the United Nations logistics support package funded from assessed contributions, as well as needs that would have to be met from the envisaged trust fund or bilateral donor arrangements.

Subject to budgetary approval by the General Assembly in March 2009, the United Nations will begin to deliver quick wins and elements of logistical support through existing arrangements in the second quarter of 2009. However, it will take time for new arrangements to come on stream. It will be important to be realistic about the time required to bring existing contingents up to United Nations standards and to deliver the full logistics support package. In the interim, capability will continue to be dependent on strong bilateral assistance from Member States.

I would also recall the request by the Security Council to Member States to contribute to this endeavour through the trust fund and bilateral arrangements, as well as through contributions of personnel, equipment and other resources as detailed in paragraphs 8 and 14 of resolution 1863 (2009), as such support will be crucial to the success of this effort.

I should be grateful if you would bring the present letter and its annex to the attention of Members of the Security Council.

(*Signed*) **Ban** Ki-moon

Annex

Details of support to be provided to the African Union Mission in Somalia

1. In line with the letter of the Secretary-General of 19 December 2008 (S/2008/804) and Security Council resolution 1863 (2009), the technical assessment mission considered support to the African Union Mission in Somalia (AMISOM) through two expected channels: (a) provision of a logistics capacity support package, to be funded from United Nations assessed contributions and comprising the equipment and mission support services normally provided for a United Nations peacekeeping operation of the same size; (b) financial support from Member States through the envisaged United Nations trust fund, which will allow for funding to AMISOM to cover reimbursements and, eventually, to help procure necessary contingent equipment. In addition, the technical assessment mission identified a number of critical needs for military capability that cannot be met through United Nations assistance but would need to be met through force generation by the African Union, with support from donors that have the required capability.

2. Logistical support to AMISOM was considered in the functional areas of supply (rations, fuel and general supply); engineering, including construction, power generation and water supply; medical support; aviation; transportation, including the provision of protected mobility (armoured personnel carriers); strategic movement support; equipment repair and maintenance; strategic and tactical communications; and information technology support. Key findings of the technical assessment mission were as follows:

(a) Supply. All required fuel, oils, lubricants and rations are supplied to AMISOM under a bilateral arrangement through a contract with a commercial company providing a multifunctional logistics contract. Some of these commodities are provided by subcontractors in Mogadishu; others are supplied by local contractors outside Somalia and are flown by a strategic air bridge from Entebbe to Mogadishu. AMISOM does not hold significant reserve stocks in Mogadishu. Contingents are also short of general supply items. In the short term, strategic stock levels must be built up in Mogadishu in order to improve the robustness and survivability of the force. In time, contracts for fuels and rations to United Nations standards will be established. Essential general supply items, including personal protection items and defence stores required by AMISOM troops and police to fill immediate needs, can be drawn from United Nations strategic deployment stocks or procured through United Nations contracts.

(b) Engineering. All required support for AMISOM troop deployment is currently provided under a bilateral arrangement through the commercial company providing the multifunctional logistics contract. The overall conditions in theatre are well below United Nations standards, particularly in the areas of accommodation, sanitation and the quality and quantity of potable water. There is an urgent need to provide and/or upgrade key facilities. At the request of the African Union (AU), the United Nations Office for Project Services has developed a plan for AMISOM headquarters and a level II hospital. With regard to other support services, there is no immediate alternative to continuing to draw support from the commercial company providing the multifunctional logistics contract to improve the sanitation, power and water production capacity at existing camps, pending the acquisition and

development of infrastructure at new locations to rehouse existing contingents and provide additional facilities for planned contingent deployments. As the support evolves, United Nations contracts will need to be established for the provision of hard-wall accommodation and significant infrastructure improvements.

(c) Medical support. Existing AMISOM medical support consists of one level I medical facility and elements of a level II hospital. Out of area MEDEVAC/CASEVAC services are provided under the contract held with the commercial company providing the multifunctional logistics support; however, they are available only during daylight hours, as Mogadishu airport has no night capability. Therefore, immediate action is required to provide United Nations standard medical services up to level II. The equipment, pharmaceuticals, consumables and laboratory supplies required, including ambulances, can be met from strategic deployment stocks. However, appropriately qualified medical personnel to staff the facilities must be provided by the participating contingents.

(d) Movement support. AMISOM relies on partner support for cargo transport, deployment and rotation of contingent personnel, and expects these arrangements to continue through current planned deployments of the additional battalions from Uganda, Burundi and Nigeria. Significant capability and capacity enhancements to the current movement support by air and sea are required to provide airfield and port services for cargo handling, as well as cargo handling equipment, storage and surface transport services. These should be covered under the United Nations logistics package.

(e) Aviation. Current air operations are performed by the commercial company providing the multifunctional logistics contract, using subcontracted commercial operators. These operations are not performed to United Nations aviation standards or International Civil Aviation Organization standards. There is an urgent need for the United Nations to provide a small jet aircraft, probably based initially in Nairobi but able to fly into Mogadishu, in order to improve the capacity for medical evacuation for AMISOM. Such an aircraft could also be used to support the activities of the United Nations Political Office for Somalia and the Special Envoy of the Secretary-General for the Great Lakes Region. Mogadishu airport is large, with considerable capacity for expanded operations. But there is an immediate requirement for equipment and infrastructure development of the airport to allow for greater operational safety, including the provision of a night operation capacity, an aviation fuel supply system, search-and-rescue operations, firefighting and emergency crash and rescue services. This should be covered under the United Nations package.

(f) Communications and information technology. AMISOM has a limited existing tactical communications capacity using conventional VHF/HF radio equipment. There is a critical and immediate need for strategic communications and information technology capability. The option of providing strategic deployment stocks to meet all aspects of that requirement is available. Installation, training of contingents and technical support in theatre may be provided through local contracts.

(g) Public information. AMISOM has no FM radio broadcast capability, a vital and preliminary component of the Mission's proposed information operations plan. To meet that urgent need on a temporary basis, a MDTS-broadcast package will be transferred from existing stocks at the United Nations Logistics Base at

Brindisi, Italy, to Entebbe, where it will be staged for forward deployment to Mogadishu. Staffing should be provided through a contracted consultant, who would support personnel from the countries contributing troops to AMISOM.

(h) Surface transport. AMISOM infantry battalions currently possess limited armoured personnel carriers and urgently need to be brought up to United Nations standards to increase their security, operational effectiveness and ability to move casualties under armoured protection. Some equipment shortfalls are being addressed under bilateral agreements, and further armoured personnel carriers will be provided as part of the AMISOM support package. There is also an immediate need for force-level vehicles in the areas of airfield support, engineering and material handling equipment. Such United Nations-owned equipment can be operated by contingents and local operators and will be needed to improve current facilities and prepare sites for planned deployments of additional contingents.

(i) Repair and maintenance. Under current memorandum-of-understanding arrangements with AU, deployed AMISOM troop-contributing countries are responsible for maintaining all major equipment to a serviceability level determined and agreed to by both parties. However, there is a need for operations and maintenance services to be enhanced and for a wider range of maintenance and operations support within the Mission, both for contingent- and United Nations-owned equipment, as well as basic training on maintenance of different types of transport vehicles. In the medium to long term, plans will be developed to ensure the serviceability of the Mission's transport assets. This will be covered under the United Nations logistics package.

3. To support planning and delivery of the logistics support package, and as directed by the Security Council in its resolution 1863 (2009), the Department of Field Support intends to establish a dedicated and independent field support headquarters. The headquarters should be located in Nairobi (with the option of establishing efficiencies in shared support services to the United Nations Political Office for Somalia). As soon as security conditions permit, it will establish an element forward in Mogadishu to act as an interface with AMISOM headquarters and to ensure delivery of support, including that provided by commercial contractors. It will also have an element in Addis Ababa to liaise at the strategic level with AU and to replace the logistics planning capability currently provided by United Nations planners in the AU Strategic Planning and Management Unit. Other specialist planners (military, police, humanitarian, medical and others, including in the area of disarmament, demobilization and reintegration), would continue to assist the AU Strategic Planning Management Unit, as requested in resolution 1863 (2009). The establishment of an independent Mission support headquarters responsible to the Department of Field Support will ensure clear accountability for the delivery of support to all clients. It will also facilitate planning for and migration to a full United Nations peacekeeping operation, if mandated by the Security Council in due course.

4. The proposed trust fund will be utilized to meet the costs incurred by troop- and police-contributing countries in providing contingents for deployment. These costs could include the provision of contingent equipment, such as uniforms, light vehicles, armoured personnel carriers and tentage, and the payment of salaries and allowances to deployed personnel.

5. In addition to the logistics support package and monies delivered through the trust fund, AMISOM will also have a number of military capability needs to achieve the new tasks required by the Djibouti Peace Agreement, protect its forces and provide better security for air and sea operations. These will need to be supplied either by countries contributing troops to the African Union or through bilateral support. The following critical needs have been identified by the technical assessment mission:

(a) Combat engineering. As the threat of indirect fire is high, AMISOM must have the capability to improve its force protection measures, including through the construction of bunkers and vehicle checkpoints and the strengthening of key points. Contracted equipment solutions could be used to support defensive and other construction tasks, including the building of bunkers, gates and fences, and to improve facilities and infrastructure. Integral combat engineering capability should be provided by troop-contributing countries; however, should this not prove to be adequate, additional support could be provided through a commercial contract.

(b) Counter-IED and explosive ordnance disposal capability. AMISOM faces significant risks from all forms of improvised explosive devices (IEDs), including remote-controlled devices, command detonated mines and suicide bombers. The technical assessment mission found that high-technology anti-IED devices, which are easily damaged or countered, are not a good solution to the problem. The most practical solution would be training on patrolling techniques and tactics; this could be provided to AMISOM by qualified Member States. In addition, a trained explosive ordnance disposal team will be required. Again, this is best provided bilaterally to a troop-contributing country from another Member State.

(c) Inshore maritime capability. Protecting air and sea lines of supply will become an increasingly critical task for AMISOM as additional battalions deploy and to support the envisaged logistics package. The technical assessment mission found that that task would require a minimum of six craft, which should be able to travel at 25 knots and operate in rough sea and weather conditions (except storms). Armed, low-technology vessels with a communications suite would be suitable; such craft could be operated by existing troops with minimal training, but would require support from a professional naval officer who could be seconded to AMISOM as a liaison officer. The additional inshore craft, maintenance and training could be provided by a contractor, if not available from a troop-contributing country.

(d) Offshore maritime capability (maritime task force). Delivery of the United Nations support package to AMISOM and to any subsequent United Nations peacekeeping operation will require extensive use of commercial shipping into and out of Mogadishu and, possibly, in due course, other Somali ports. In order to ensure safe passage for such shipping, the United Nations will require guaranteed naval escorts. This would ideally be provided by a dedicated maritime force provided by a troop-contributing country or through a formal arrangement with one of the existing maritime forces in the area. Without adequate naval support, it will be impossible for the United Nations logistics package to be delivered.

Legal and contractual issues

6. The United Nations support programme will be defined and provided through a range of contractual instruments. Host Government agreements need to be established to allow the United Nations and its contractors to operate in respective countries. A memorandum of understanding between the United Nations and AU/AMISOM is required to define the responsibilities and obligations of each party. On the commercial side, the United Nations will seek authority initially to absorb existing arrangements for AMISOM troop support provided by donors, and formalize arrangements with the United Nations Office for Project Services for the mission headquarters and hospital construction. A range of additional support services will be required as soon as possible. As the United Nations analysis of contingent and future United Nations support conditions develop, it is anticipated that other services will be identified. In parallel, scopes of work for longer-term requirements to bring support services to United Nations standards will be developed and bid commercially. In view of the prevailing conditions in Mogadishu, which prevent United Nations staff from participating in daily in-theatre activities, it must be recognized that flexibility will be required in procuring, administering and verifying services provided by contractors.

Funding arrangements

7. With the agreement of the General Assembly, a proposal will be submitted to it for initial funding requirements to provide the United Nations logistical support package to AMISOM in line with the Security Council resolution. The logistical support will cover the military and police components of AMISOM. In this regard, logistics support for the Mission's full deployment and sustainment will be a substantial undertaking. Overall costs and staffing would be similar to that for an equivalent United Nations peacekeeping mission, but, uniquely it would be funded separately through United Nations funding (for logistics support) and a United Nations-administered trust fund of voluntary contributions (for AMISOM personnel and contingent equipment).

8. United Nations-assessed funding will be utilized to meet the life support needs of the deployed AMISOM force. This will include payment for rations, fuel and additional engineering works and improved aviation, communications and medical support. Assessed funding will also be used to pay for the strategic deployment of new forces, the rotation of existing forces, the movement of equipment and supplies and additional staff to manage the delivery of the package.

9. Costs for the logistics support package remain dependent on ongoing work to identify suppliers and deliver support solutions. However, the package could require a significant allotment of United Nations-assessed funding in addition to the trust fund in order to meet set-up costs and a year of full AMISOM operations based on comparable missions of the Department of Peacekeeping Operations

10. The proposed trust fund will be utilized to meet the costs incurred by troop- and police-contributing countries in providing contingents for deployment. Those costs could include the provision of contingent equipment, such as uniforms, light vehicles, armoured personnel carriers and tentage, and the payment of salaries and allowances to deployed personnel.

Delivery timelines

11. Subject to budgetary approval by the General Assembly in March, the United Nations will begin to deliver quick wins and elements of logistical support through existing arrangements in the second quarter of 2009. However, it will take time for new arrangements to come on stream. It will be important to be realistic about the time required to bring existing contingents up to United Nations standards and to deliver the full logistics support package. In the interim, capability will continue to be dependent on strong bilateral assistance from Member States.